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Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 2

ORIGINAL

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

RECORD

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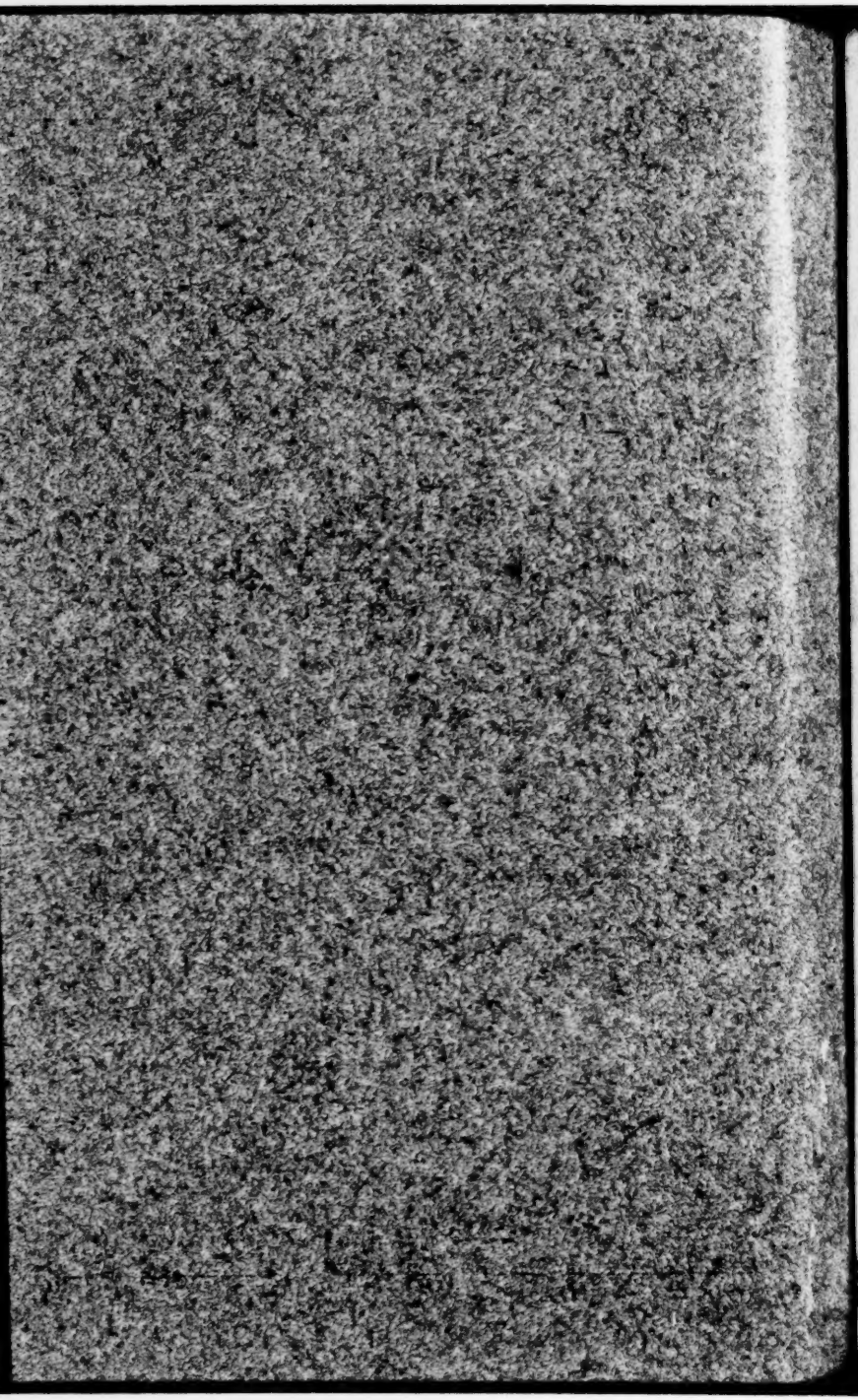

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IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

RECORD
PART ONE

BEING THE PLEADINGS AND PROCEEDINGS IN
THE SUPREME COURT OF THE UNITED STATES
PRIOR TO REFERRING
OF THE CAUSE
TO A SPECIAL MASTER.

IN THE

Supreme Court of the United States.

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States: 1

The Commonwealth of Virginia, by William A. Anderson, her attorney-general, brings this, her bill, against the State of West Virginia, and shows to the court that:

I.

On the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000.00 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose, but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

II. 2

That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio river, that the Commonwealth of Virginia, in the first quarter of the Nineteenth century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio river, since the first day of January, 1861, has increased to very great and material extent the values of real estate, including coal and timber, in 3
the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1st, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to tax-

ation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

III.

The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvement, in a very large measure for the purpose of developing the aforesaid resources of the Western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear from an inspection of the legislative records of the State, 4 where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been the fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

IV.

The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the

territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

V.

On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the "Restored State of Virginia," and will be hereafter referred to in this bill as the "Restored State."

VI.

On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to "provide for the formation of a new State out of the portion of the territory of this State;" Section 9 of which ordinance was as follows, to-wit:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and

shall be determined by the laws now existing in the State of Virginia."

VII.

On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein, and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been 7
made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

VIII.

Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

"That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public 8
works, in any parent bank or branch doing business within

said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government."

Your oratrix is informed, believes, and so charges, that the property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been 9
obtained by Virginia since April, 1861.

IX.

And by a further Act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

"1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located out-

side of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property 10 of this State."

And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

X.

The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union contained the following provisions:

By Section 5 of Article VIII. of said Constitution it was provided:

"5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of War."

And by Section 7 of Article VIII. it was provided:

"7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by Section 8 of Article VIII. it was provided:

"8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accru- 11 ing interest and redeem the principal within thirty-four years."

At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any "public debt" or "previous liability," except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of Janu-

ary, 1861. By section 5 of the same Article VIII., above set forth her Constitution forbade the creation of any debt "except to meet casual deficits in the revenue, to redeem a previous liability of the State," &c., and there was not and could not have been any such "previous liability," except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized a sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, 12
and her liability for the money and property of the original State which had been transferred to her.

XI.

After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt.

XII.

The efforts looking to a settlement by the concurrent action of the two States having proved abortive, and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

The first of these was made by the General Assembly which was chosen at the close of the period of "destruction and reconstruction," which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

The purpose of the representatives of the Commonwealth, then

just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay to the uttermost every dollar which her most exacting credit- 13
or could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

XIII.

As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy One Million Dollars, as will more particularly ap- 14
pear from a statement thereof filed as an exhibit herewith and hereinafter referred to Exhibit Number 7.

It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

It would seem from the above statement that Virginia has al-

ready done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

XIV. 15

By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

XV.

All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and con-

tracted on January 1, 1861, as stated in paragraph 1 of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for.

XVI.

Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution 17
to the extent of West Virginia's equitable liability therefor.

XVII.

In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereinafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period

of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

XVIII.

Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia 18
was created, rests upon the following among many grounds which might be indicated here:

First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is embedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

Third. The State of West Virginia has further, by the repeated enactments and joint resolution of her legislature, recognized her liability for a just proportion of this debt.

Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter 19
to be had between her and the Commonwealth of Virginia.

Fifth. While the transfer of this property, real and personal, and also of certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of "The Restored Government of Virginia," there were in fact repre

sented in said "Restored Government" and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.

XIX.

The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: "*A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,*" approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the 20 then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled "*An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,*" the purpose of which Act is sufficiently set forth in its title, and a copy of the Act will also be hereinafter shown as one of the exhibits herewith filed.

XX.

The Commission acting under said last-mentioned Act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906,

made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill.

XXI.

In order that the matters hereinbefore referred to may be more fully shown to the Court, your Oratrix files herewith certain exhibits (eight in number) which she prays may be read as a part of her bill, to-wit:

Exhibit Number 1. A copy of the said Act of the General 21
Assembly of Virginia, of March 30, 1871, entitled an Act to provide for the funding and payment of the public debt.

Exhibit Number 2. A Copy of the Act of the same General Assembly of March 28, 1879, entitled an Act to provide a plan of settlement of the public debt.

Exhibit Number 3. A copy of the Act of February 14, 1882, of the same General Assembly, entitled an Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular payment of the interest thereon.

Exhibit Number 4. A copy of the said Act of the same General Assembly, approved February 20, 1892, entitled an Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an Act entitled, etc.

Exhibit Number 5. A copy of the said Joint Resolution of the said General Assembly of March 6, 1894, providing for the appointment of a Commission.

Exhibit Number 6. A copy of the said Act of March 6, 1900, under which the powers of the said Commission were enlarged and the institution of this suit authorized.

Exhibit Number 7. Showing amounts paid off since January 1, 1861, or assumed and now carried by Virginia on account of the old debt of the undivided State.

Exhibit Number 8. A copy of the report of the said Virginia Commission made to the General Assembly of that State, dated January 6, 1906, together with the accompanying papers.

XXII. 22

Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to de-

termine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet.

And your Oratrix will ever pray, &c.

WILLIAM A. ANDERSON,
Attorney General of Virginia.
HOLMES CONRAD.

EXHIBITS WITH BILL. 23

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

EXHIBIT NUMBER 1. 24

CHAP. 282.—An Act to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

(Acts G. A. of Va. 1870-1, p. 378.)

Whereas in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas, the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this State, as the constitution of this state provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this state, which are recognized by its constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James river company, and the bonds of the James river and Kanawha company guaranteed by this state, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in six per centum coupon or registered bonds of this state of the denominations of one hundred, and multiples thereof, dated that day and to become due and payable in thirty-four years after date, but redeemable at the pleasure of the state, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer, and the coupons to bearer, at the treasury of the state and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts dues, and demands due the state, which shall be so expressed on their

face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by the law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars or any multiple thereof, shall be exchangeable for bonds of the character herein authorized to be issued; and new 26
certificates of like character may be issued for any fractional sums less than one hundred dollars which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared shall commence the issuance of the same as herein provided. 27
The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or

engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued and the amounts for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable. 28

5. Whatever sum may be realized from the claims of this state against Seldon, Withers and Company, and the Chesapeake and Ohio Canal company, and from the sale and disposition of the stocks and bonds, and debts owned by the state in and against any and all railway or other improvement companies, and all sums which may be realized from the claims of this state against the United States, and from any sales of any real estate now belonging to the commonwealth, shall be paid into the treasury of the state to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the

bonds issued under and by authority of this act shall have been paid. there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and the second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expense incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the treasurer and second auditor, and approved by the governor.

7. This act shall be in force from and after its passage.

EXHIBIT NUMBER 2.

CHAP. 24.—An Act to Provide a Plan of Settlement of the Public Debt.

Approved March 28, 1879.

(Acts G. A. of Va. 1878-9, p. 264.)

Whereas it is believed by the general assembly that the rate of interest heretofore agreed to be paid by the state on the public debt is greater than can be borne without destroying the industrial interests of the state and whereas the council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas it is highly expedient, in the best interest of the state, to secure an amicable settlement with the creditors by which the credit of the state may be restored and enhanced, and the aggregate amount of interest payable by the state reduced within limits which will not be too onerous to the population; therefore,

1. Be it enacted by the general assembly of Virginia, That to provide for funding the debt of the state, the governor is hereby authorized to create bonds of the state, registered and coupon, dated the first day of January, eighteen hundred and seventy-nine, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per

centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The state shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons on said bonds shall be receivable at and after maturity for all taxes, debts, 31
dues and demands due the state, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the state a certificate for any interest thereon, due and unpaid, and such certificate shall be receivable for all taxes, dues and demands due the state, and this shall be expressed on the face of the registered bonds and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation direct or indirect, by the state, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars, and one thousand dollars, at the option of the creditors respectively, and the bonds as well as their coupons shall be payable at Richmond and New York, or if desired may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the state, as hereinafter provided.

2. For purposes of designation, the outstanding indebtedness of the state is divided into two classes, as follows, to-wit:

Class I. which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

Class II. which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the state shall be funded in the new bonds, to be issued under this act, as fol- 32
lows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation: Provided that the proportion of Class II. refunded, shall never exceed in amount one-third (1-3) of the total

amount refunded, until eighteen million dollars of Class I. have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided at least eight millions of dollars of the outstanding obligations of the state prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first — December, eighteen hundred and seventy-nine they may present an additional amount of at least five millions of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as the said corporations shall present for funding the obligations aforesaid, in the amounts and in the periods aforesaid, 33 they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act: Provided that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the governor may, in his discretion, make a like contract with responsible parties for the funding of the debt of the state under this act.

6. The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so far as the same be modified by the provisions of this act: Provided that all bonds and certificates which may be necessary to be printed, shall be printed from a plate which shall be the property of the commonwealth, and shall remain in the keeping or under the con-

trol of the second auditor. Whenever an obligation of the state shall be presented to the second auditor to be funded under this act he shall note the fact and date on the proper register in his office shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. There shall be endorsed upon the said warrant a description of the old obligations, and the calculation of principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the second auditor to the treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper obligations to be issued, register the same in his office, clip 34
therefrom the past-due coupons and punch the same, and deliver the said obligations to the second auditor, taking his receipt therefor upon his warrant. The second auditor shall countersign the obligation so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible and every bond and coupon so cancelled shall be filed for reference.

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one third, issued under this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of said certificates.

8. The general assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be levied and collected the 35
same as, and together with other taxes, a tax of two cents on

the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirty, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators, and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the state to meet the accruing interest on the said bonds promptly, the auditor is hereby authorized and directed, by and with the advice of the governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the state, a sum sufficient to enable him to meet promptly the said interest as it accrues. And in case the auditor shall not be able to 36
raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non interest-bearing certificates of indebtedness of this state, to be signed by himself and countersigned by the treasurer, and properly registered in the offices of the auditor and treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the state, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-five cents upon the dollar. The said certificates shall be receivable for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The amount of such certificates which may be issued at any one time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The auditor shall report regularly to the general assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the auditor shall not be able to

borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, whether they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this state, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the treasurer of the state, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hun- 37
dred and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

EXHIBIT NUMBER 3. 38

CHAP. 84.—An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Preamble.—Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the account between the State and her creditors—the account is as follows:

		Interest.	Principal.
	Principal outstanding at this date:		
1861, January 1st,	Sterling debt bearing 5 per cent. interest..... $ 1,973,000 00		
	Dollar debt bearing 6 per cent. interest..... 29,533,582 90		
	Debt guaranteed bearing 6 per cent. interest..... 294,130 00		
	Total principal		$31,800,712 90
	Interest:		
	Past due and uncalled for at this date..... 101,023 63		
	Maturing at this date, January 1st, 1861..... 944,156 38		
	Total interest	$1,045,183 01	
1863, July 1st.	The State of West Virginia was formally admitted into the Union June 20th, 1863. The property and resources of Virginia, upon which the above debt has been founded, were by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.		
39	*Principal July* 1st, 1863:		
	Sterling debt bearing 5 per cent. interest..... $ 1,973,000 00		
	Dollar debt bearing 6 per cent. interest..... 29,827,712 90		

	Bonds issued since January 1st, 1861, in discharge of debts contracted, and appropriations made prior to that date	1,340,500 02	
	Total principal July 1st, 1863		33,141,212 92
	Interest July 1st, 1863:		
	Past due January 1st, 1861, and uncalled for	1,045,183 01	
	Accrued between January 1st, 1861, and July 1st, 1863, inclusive	4,909,533 07	
	Total interest to July 1st, 1863, inclusive	5,954,716 08	
1863, July 1st.	Two-thirds of the above debt, principal and interest, to this date is assumed as Virginia's equitable portion, in consideration of the partition of her territory, population, and resources, upon the well established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—		
	Principal:		
	Two-thirds of $1,973,000 sterling debt	1,315,333 34	
	Two-thirds of $31,168,212.92 dollar debt	20,778,808 62	
	Total principal, two-thirds, to July, 1863, inclusive		22,094,141 96
	Interest:		
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive	3,969,810 72	

	Less amount of interest paid by Virginia since January 1st, 1861, exclusively, out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto..		3,662,434 55	
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above..		1,315,333 34	
	Principal July 1st, 1863, in dollar bonds as above	$20,778,808 62		
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67		
	Total dollar bonds.....		17,068,358 95	
	Total principal			18,383,692 29
	Interest from July 1st, 1863, *to July* 1st, 1871, *inclusive:*			
	On $1,315,333.34 sterling bonds at 5 per cent.....		526,133 28	
	On $20,788,808.62 dollar bonds at 6 per cent.....		9,973,828 14	
			10,499,961 42	
	Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed	445,257 58		

	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive.....	3,594,289 11			
			4,039,546 69		
40	*Interest*:			6,460,414 73	
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive		3,969,810 72		
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55		
	Balance of interest due and unpaid July 1st, 1863, inclusive..			307,376 17	
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above..		1,315,333 34		
	Principal July 1st, 1863, in dollar bonds as above....	$20,778,808 62			
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67			
	Total dollar bonds		17,068,358 95		
	Total principal				18,383,692 29
	Interest from July 1st, 1863, *to July* 1st, 1871, *inclusive:*				
	On $1,315,333.34 sterling bonds at 5 per cent.....		526,133 28		

On $20,778,808.62 dollar bonds at 6 per cent.....		9,973,828 14	
		10,499,961 42	
Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed	445,257 58		
Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive.....	3,594,289 11	4,039,546 69	
			6,460,414 73
Add interest accrued to July 1st, 1871, as above		6,767,790 90	
Total		18,041,288 93	
Less amount paid between July 1st, 1871, and October 1st, 1881,—in money	$2,415,973 56		
In coupons	8,707,615 50		
Less amount covering average time of the redemption of the $1,540,658.12 bonds redeemed	331,800 00		
Less tax-receivable coupons outstanding October 1st, 1881, and to be paid as part of the floating debt	895,722 00		

Less tax-receivable coupons maturing in January and July, 1882....	1,117,724 87		
Amount of interest (special):			
Redeemed and cancelled.....	380,110 02		
Total deductions.....		13,848,945 95	
Balance of interest to July 1st, 1882.....			4,192,342 98
Total debt to July 1st, 1882:			
Principal as above			16,843,034 17
Interest, as above			4,192,342 98
Total			$21,035,377 15

Including bonds held by the literary fund to the amount of $1,428,245.25, and interest on the same—in arrears July 1st, 1881, 516,322.19—and interest added from that date to July 1st, 1882, $85,694.71, making $602,016.90 included in the above sum of $4,192,342.98.

Total debt	21,035,377 15

And whereas by this account it appears that Virginia owes 41
her creditors, as of the first — July, eighteen hundred and eighty-two, including the bonds held by the Literary fund and arrears of interest thereon cast to such date, twenty-one million, thirty-five thousand, three hundred and seventy-seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon; that is for her equitable share of the bonds known as consols, and here designated as class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest then to be in arrears, one million seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling—here designated as class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more) the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as class F; and for her equitable share of the bonds held by the commissioners of the Literary fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents; and whereas the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of the government and the maintenance of their schools, as required by the

constitution; and whereas the net revenues of the state remaining and so derived, after providing for the proper and gradual liquidation of the balance of the moneys heretofore diverted from the public free school fund, after liquidating gradually the ar- 42
rearages to the Literary fund, and leaving some small margin for the immediate and subsequent exigencies, which are, and are likely to be demanded by the public welfare—notably in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the general assembly of Virginia, That the board of commissioners of the sinking fund of the state, be, and they are hereby empowered and directed to create bonds, registered and coupon, to such extent as may necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the state on the first day of July, nineteen hundred and thirty-two; provided that the state may, at any time and from time to time, after July first, nineteen hundred, redeem any part of the same, principal and interest, at par. In case of such redemption before maturity, the bonds to be paid, shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid, shall be given in a newspaper published in Richmond, New York, and London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The commonwealth of Virginia acknowledges herself indebted to —— —— (in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation) in the sum of —— dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the state, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the state, in such lawful money, on the first days of January and July, at the rate of three per centum per annum until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and

the counter-signature of the second auditor, hereto affixed according to law.

—— ——, *Treasurer,*
—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be as follows, to-wit:

No. —— (of bond). 43

The commonwealth of Virginia will pay to bearer —— dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first day of January and July, alternately—the first coupon to be payable January first, eighteen hundred and eighty-three.

—— ——, *Treasurer.*

$——.

Each coupon to be impressed on the back with its number, in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of a different tint: Provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore numerated, including the bonds held by the literary fund, as follows, that is to say:

(*a*) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act (principal and accrued interest, at par, from the preceding period of maturity to the date of exchange,) are to be given for every one hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given dollar for dollar.

(*b*) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(*c*) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A and B, and accounting for the same as provided in class D.

(*d*) For her equitable share of class D, at the rate of eighty per centum.

(*e*) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(*f*) For her equitable share of class F, at the rate of sixty-three per centum.

(*g*) For her equitable share of the bonds of the Literary fund, as in the case of class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:

No. ——. 44

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, held by ——, dated the —— day of ——, and numbered ——, leaving a balance of —— dollars, with interest from ——, to be accounted for by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day of——, eighteen ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

Fractional Certificate.

Register No. —. Transaction No. —.

This certificate entitles the holder hereof to the sum of —— dollars, fundable at its face in the bonds of the commonwealth of Virginia, authorized by an act approved —— day of ——, eighteen hundred and eighty-two, when presented with certificate of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars and multiples thereof.

Done at the capitol of Virginia, this——day of ——, eighteen hundred and eighty ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be canceled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for the specific purpose; and in each case giving the date, number and amount of the obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the bond, bonds or indebtedness surrendered. 45

10. The plates from which the bonds and fractional certificates authorized by this act, are printed, shall be the property of the commonwealth, and shall remain in the keeping of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the state each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be canceled by the said board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of the issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and canceled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries, may exchange any state bonds held by them as provided, for bonds issued under this act, when so authorized by the court having juris-

diction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act, shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

EXHIBIT NUMBER 4. 46

CHAP. 325. An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.
(Acts G. A. of Va. 1891-92, p. 533.)

Whereas by a joint resolution of the general assembly of the state of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the state not funded under the act known as the "Riddleberger bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Junior, Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' committee," have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded

under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal an 47
agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States) together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually, of which aggregate debt of about twenty-eight million of dollars the said bondholders' committee represent that they now hold and agree to surrender not less than twenty-three million of dollars, and

Whereas said report and agreement contemplate the surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore

1. Be it enacted by the general assembly of Virginia, That the commissioners of the sinking fund, a majority of whom 48
may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and

ninety-one, and be payable at the office of the treasury of the state, or at such agency in the city of New York, as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the state; provided that the state may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved —— day of ——, eighteen hundred and ninety-two.

The commonwealth of Virginia acknowledges herself to be indebted to —— —— (in case of a coupon bond to the bearer, and in case of a registered bond inserting the name of a person or corporation, or assigns), in the sum of —— dollars, which she promises to pay in lawful money of the United States, at the office of the treasurer of the state, or at such agency in the city of New York as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the state, or at the agencies of the state in New York city and London, England, or at either place, as may from time to time be designated by the state, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the commonwealth in case of coupon bonds). And this obligation is hereby made exempt from any taxation by the said commonwealth of Virginia, or any county or municipal corporation thereof. 49

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the commonwealth of Virginia, hereto affixed according to law.

[SEAL.] —— ——, *Treasurer.*

—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

Coupon No. —.

On the first day of —— the commonwealth of Virginia will pay to bearer —— dollars in lawful money of the United States, at the office of the treasurer of the state, or at the agencies of the state in New York city or London, England, or at either place, as may be designated by the state; the same being six months' interest on bond number ——, —— dollars.

—— ——, *Treasurer.*

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the state of Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the state and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph A hereof, shall be sealed in convenient packages as the

examination proceeds. Each of the packages shall be numbered, and upon each package shall be endorsed the amount and 51
character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph A hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidence of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the state of Virginia, all conforming to the requirements of paragraph A hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the said bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of
twenty-three million of dollars or more, if the engraved bonds 52
hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee, issue to said bondholders' committee a manuscript registered bond of the state of Virginia, substantially of the form of the bond hereinbefore specified, for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the state shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, to be presented with such 53 bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph A hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph C of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:

No. —. The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for —— dollars, dated —— day of ——, and No. —, leaving a balance of —— dollars, with interest from ——, to be accounted for to the holder of this certificate by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day 54
of ——, eighteen hundred and ninety-two.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph E, section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the state as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the state which have been once deposited with the bond-holders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bond-holders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely: to each of the several classes of said depositing creditors the same proportions, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-two, nor shall any coupon bonds be 55
received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subseqently

tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the commonwealth.

8. All the coupon and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the state each year up to and including the year nineteen hundred and twenty-nine, one half of one per cent. upon 56
the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the state each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest), of the bonds issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the state issued under the provisions of the act

aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the commonwealth.

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the manner hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors, administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

12. All coupons heretofore tendered for taxes and held by 57
said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied: Provided the said tax payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received: Provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the commonwealth.

15. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments thereto to-wit: an act entitled "an act to declare the true in- 58
tent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and

eighteen hundred and eighty-two, approved February fourteenth eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the commonwealth, to make one extension of the time for the funding of the said twenty-eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by, and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

EXHIBIT NUMBER 5. 59

CHAP. 747. A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

(Approved March 6, 1894.)

(Acts G. A. of Va., 1893-4, p. 867.)

Whereas the general assembly of Virginia is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia; and

Whereas the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eight, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, 60
eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present state of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state; now, therefore,

Be it resolved by the senate of Virginia (the house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this state, shall be appointed by the governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or existing during recess of the legislature shall be filled by the governor on notification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the state of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia. 61

But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.

All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account.

And their action shall be subject to the approval or disapproval of the general assembly, and shall not be binding on the state until approved by the general assembly. The governor is requested to communicate this joint resolution to the governor and legislature of West Virginia.

This joint resolution shall be in force from its passage.

EXHIBIT NUMBER 6. 62

CHAP. 825. An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6, 1900.

(Acts G. A. of Va., 1899-1900, p. 902.)

Whereas the general assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates 63
for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the general assembly is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the debt of the original state of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt: now, therefore,

1. Be it enacted by the general assembly of Virginia, That the commission created and appointed under a joint resolution of this general assembly entitled a joint resolution to provide for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said com-

mission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificate as a full settlement of all their claims there- 64 under.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account.

3. This act shall be in force from its passage.

EXHIBIT NUMBER 7. 65

Showing Amounts Paid Off Since January 1, 1861, or Assumed and Now Carried by Virginia on Account of the Old Debt of the Undivided State.

* * * * * * * * * *

Amount of interest paid, as shown by the records of the Second Auditor's Office, from January 1st, 1861, to February 1st, 1906	$35,551,642.82
Bonds heretofore paid off, taken up, and retired by Virginia to Sept. 30, 1905. See 2nd Auditor's Report for 1905, p. 21, and now held by Virginia	10,771,791.49(*)
New Bonds of Virginia issued for the portion of the unpaid debt funded and assumed by her—See Second Auditor's Report for 1905, p. 9 ...	25,537,820.00
	$71,861,253.31

(*) NOTE.—This sum of $10,771,791.49 probably does not include some considerable amounts of ante bellum bonds of Virginia paid her by some of the Railroad Companies of the State, and by the Dismal Swamp Canal Company in payment for the share and interest of the State in such Companies or for property sold them by the State; nor does it include considerable amounts of said bonds received by the State from the sureties of certain Sheriffs—nor does the Statement include amounts paid by Virginia since 1861 in settlement of open accounts or unfounded ante bellum debts of the undivided State. These amounts can be ascertained from the records of the Board of Public Works, the First and Second Auditor's offices and the Acts of Assembly.

EXHIBIT NO. 8.

Report of the Commission appointed and acting under the 66
joint resolution of the General Assembly of Virginia, approved March 6th, 1894, and the act of the said General Assembly approved March 6th, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia and known as Virginia Deferred Certificates.

RICHMOND, VA., January 9th, 1906.

To the General Assembly of Virginia:

Your Commission appointed and acting under the joint resolution of the General Assembly entitled "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found entitled to the same," approved March 6th, 1894, and an Act of the General Assembly entitled "An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, beg leave to make a further report of their proceedings, as follows:

It will be noted that it appears from the first report of your Commission, dated January 28th, 1896, and printed as Senate Document No. 10 in the Senate Journal and Documents of 1896, and as House Document No. 4 in the House Journal and Documents of that session, that the conditions required by said joint resolution having been complied with, your Commission was ready and desirous to open negotiations with West Virginia for a settlement as provided for in said joint resolution, and this fact was communicated to the Governor of West Virginia by the Governor of this State with the request that such negotiations might accordingly be 67
opened, which communication was laid before the Legislature

of West Virginia, but that body, by a joint resolution, declined to enter into negotiations on the subject.

By a subsequent report of your Commission to this General Assembly, dated February 7th, 1900, and to be found printed as Senate Document No. 6 in Senate Journal and Documents for the session of 1899-90, it was further shown that the control and disposal of a majority of said certificates had been again tendered your Commission by a Committee, of which John Crosby Brown of New York was chairman, acting under a depositing agreement of July 28th, 1898, and the said Committee offering to accept whatever might be realized from West Virginia on the certificates in full settlement of their claims. A copy of said depositing agreement of July 28th, 1898, under which said Committee was constituted, was filed with said last report, and the same is also now herewith filed showing who constituted said Depositing Committee and what their powers and functions were, and also that Brown Brothers & Company, Bankers of New York, N. Y., were the depository of the said Committee in whose hands the said certificates had been placed.

Upon the coming in of this last report, the Act of March 6th, 1900, was passed by the General Assembly, by which the powers and duties of your Commission were very materially enlarged, and it was provided that if at least two-thirds of the certificates of 1871 outstanding in the hands of the public, and a majority of all the other certificates so outstanding, were deposited and placed subject to the control of your Commission upon the agreement that the creditors would accept whatever might be realized thereon from West Virginia in full settlement of their claims, then your commission was authorized, by and with the advice and approval of the Attorney General of the State, to take such action and institute such proceedings on behalf of the State as might, in the 68
judgment of your Commission and the Attorney General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement in the premises, but all the expenses in connection with any of the matters involved were to be borne by the certificate holders. A copy of this Act is for convenience of reference herewith filed.

At the time of the passage of this Act the Depositing Committee did not hold the two-thirds in amount of the certificates of 1871 required by the Act as a basis for negotiations or action by your Commission, but having acquired them later, the Committee, on the 18th of September, 1902, submitted to your Commission a proposition in writing, bearing date on that day, by which they tendered and placed subject to the control of your Commission, in accordance with the terms of said Act, $8,565,095.70 of the certificates of 1871, being more than the requisite two-thirds of these certificates outstanding, and $1,782,475.13 of the other certificates outstanding, being a majority thereof, upon the agreement and arrangement on

the part of your Commission acting for the State of Virginia that they would enter into negotiations with the State of West Virginia or the constituted authorities thereof, for the purpose of effecting a settlement with that State with respect to said certificates, and that your commission would, by and with the advice and approval of the Attorney General, take such action as they might deem needful in the premises, any amount realized on such settlement to be accepted in full of all claims on said certificates as in said Act provided.

This proposition was accompanied by the statement of Brown Bros. & Co., the depository, showing that the certificates referred to were held by them, and it was stated in the proposition that upon its acceptance by your Commission it should constitute a contract between the parties to continue in force for three years, but subject to renewal or extension by the parties, and to such 69
amendment or modification as might be agreed on. It was on the day of its date accepted in writing by the unanimous action of your Commission, and the acceptance thereof duly endorsed thereon, and the same was approved by the Attorney General on September 29th, 1902; and a copy of the same showing its acceptance and the endorsements thereon is herewith filed and is referred to as showing in detail the action taken by your Commission. This agreement constitutes an arrangement with Virginia under said Act of March 6th, 1900, for obtaining a settlement with West Virginia and thus precluded the right which any certificate holder might under the terms of the depositing agreement, otherwise have had to withdraw his certificate after October 1st, 1902.

On December 3rd, 1902, a plan of settlement as provided in the said depositing agreement of July 28th, 1898, was formulated, approved and recommended by the Depositing Committee and Advisory Board created under said agreement, by which the provisions of the foregoing contract of September 18th, 1902, were adopted as included in their plan of settlement, with the right to the Depositing Committee to make such further contracts with the Virginia Commission as might be deemed needful to bring about a settlement with West Virginia under said joint resolution and Act of the Virginia Assembly.

This plan of settlement provided for a full compliance on the part of the Depositing Committee with the terms of said joint resolution and Act, and clothed the Committee with ample powers to act in the premises, and notice of it was duly published in New York and London, as required in the agreement of July 28th, 1898, so as to afford opportunity to any dissenting depositor of certificates to give notice of his unwillingness to accept the proposed settlement, which notice the agreement provided was 70
to be given within thirty days from the completion of the publication, but no such notice appears to have been given at any time by any depositor. The depositing agreement also provided that

in the absence of such notification from a majority of the depositors the proposed plan should become effective and final, and that the declaration in writing of this fact by the Committee to the depository should be conclusive on this point; and such declaration in writing by the Depositing Committee to Messrs. Brown Bros. & Co. the depository, was accordingly so made in writing on December 13th, 1904. A copy of this plan of settlement and the certificates of the publication thereof, together with the said declaration in writing of the Committee, are all herewith filed and are referred to as parts hereof.

On December 14th, 1904, the amount of said certificates deposited with Brown Brothers and Company, as aforesaid, had increased to $11,607,298.64, of which $9,360,062.96 were those of 1871, and your Commission proposing to again attempt to open negotiations for a settlement with the legislature of West Virginia (which was then about to convene) it was thought advisable to enter into a contract by way of amendment to that of September 18th, 1902, by which the complete control of all these certificates should be placed in the hands of your Commission, and such additional agreement, bearing date December 14th, 1904, was accordingly entered into between the said Depositing Committee and your Commission, and approved by the Attorney General; and cotemporaneously therewith by a receipt or certificate bearing date on the same day, the said Brown Brothers and Company acknowledged and certified that they held all the certificates last aforesaid to the amount of $11,607,298.64 on deposit for and subject to the control and disposition of your Commission without reservation or condition of any kind. A copy of this agreement and receipt of December 14th, 1904, together with the Attorney General's approval, will be found filed herewith. By a subsequent communication of January 23rd, 1905, from Brown Bros. & Company to your Commission, it was shown that said deposits, so placed under the control of your Commission, had increased to $12,910,555.89, of which $10,639,776.42 were those of 1871, and a copy of this communication will also be found herewith filed.

Desiring, as above stated, to open communication with West Virginia, your Commission, on December 14th, 1904, appointed a sub-committee consisting of Messrs. Randolph Harrison, Chairman, H D. Flood, H. H. Downing and John B. Moon, who, together with the Attorney General, should be authorized to open negotiations with the proper authorities of West Virginia looking to a settlement of the matters at issue. This sub-committee endeavored to do this by the presentation of a memorial to His Excellency, A. B. White, Governor of the State of West Virginia, signed by the sub-committee and approved by the Attorney General, bearing date January 25th, 1905, a copy of which is herewith filed. This memorial was presented to the Governor of West Virginia at Charleston, W. Va.

by the Attorney General and the chairman of the sub-committee and was by him, on the 27th day of January, 1905, transmitted to the Senate of West Virginia by a special message to that body, but without any recommendation on his part, a copy of which message is also herewith filed.

It was arranged, however, by the Senate and House Committees on Finance of the West Virginia Legislature to give to the sub-committee a hearing upon the subject at Charleston on February 1st, 1905, at which hearing the Attorney General of Virginia, the chairman of the sub-committee and the chairman of your Commission attended, and the memorial of your Commission above referred to was read, and a full presentation was made by Mr. Harrison, chairman of the sub-committee, of the reasons why West Virginia should, at least, enter into negotiations in regard to a settlement in an address made by him to the Senate and House Finance Committees aforesaid. It was considered by your Commission that Mr. Harrison's address dealt with the questions involved in so clear and able a manner and showed so conclusively that it was both the right and duty of Virginia to ask for a settlement, that they caused it to be printed, and a copy of it is herewith filed. 72

The Legislature of West Virginia, however, failed and declined to enter into any negotiations or to empower any committee or other official to do so, but on the contrary passed the following resolutions: "Resolved, by the Legislature of West Virginia: That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so called debt of Virginia, and that this Legislature is opposed to any negotiations whatsoever on that subject." Indeed your Commission are advised that resolutions of a similar import have been passed by all, or nearly all, of the Legislatures of West Virginia which have met since your Commission first communicated with them on the subject in 1896, thus showing a persistent and determined refusal on the part of West Virginia to pay any portion of what they are bound for on account of the debt of the original State, or to enter into any accounting or negotiations whatsoever on the subject.

The deferred certificates of 1871 issued by the State of Virginia are in the following form:

"Copy of Certificate under Act of March 30, 1871.

"COMMONWEALTH OF VIRGINIA.

"No. —.

"TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an Act approved March 30th,

1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest, amounting to $—. Payment of said one-third with interest thereon 73
at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"____ ____.

"Treasurer of the Commonwealth of Virginia

"__ __ ____.

"Second Auditor of Virginia."

So it would appear that if the contention of West Virginia is correct, the responsibility that attaches to the issuing of these certificates must rest with Virginia alone and West Virginia be responsible for nothing in connection with the debt of the original State.

By a recent enactment of the State of South Dakota suit was authorized against any state whose over-due bonds might be donated or deposited in her treasury, and under this law a suit was brought by the South Dakota and judgment given against North Carolina in the Supreme Court of the United States upon some past due bonds of the latter state as see the case of South Dakota *vs.* North Carolina, 192 U. S. Reports, 286,—and a like statute has lately been enacted by the State of New York authorizing similar suits. Your Commission are informed that such suits have lately been proposed against the State of Virginia under these statutes upon the certificates of 1871 and have only been restrained and prevented
by the prospect of some definite action on the part of Vir- 74
ginia.

So your Commission were confronted with the alternative of either a suit by Virginia as plaintiff on these certificates with indemnity to her against liability as proposed by the Depositing Committee, or a suit against her without any such indemnity, and your Commission had no doubt as to the safe and proper course to pursue, especially as Virginia herself holds through the agency of her Sinking and Literary funds $2,578,518.68 of the certificates of 1871 and $166,943.33 of the certificates of other classes which would be entitled to their distributive share in whatever may be realized from West Virginia.

The contract of December 14th, 1904, would have expired by limitation on September 18th, 1905, but in order to allow time for the drawing of a final contract, the same was by an agreement en-

dorsed thereon on September 9th, 1905, extended to December 1st, 1905; and on the 24th day of November, 1905, a final contract was drawn up and entered into between your Commission and the Depositing Committee. This last contract was annexed to that of December 14th, 1905, as an extension and enlargement thereof, it having been provided in all of said contracts that they might be extended, modified and changed by the act of the parties.

A copy of said last contract of November 24th, 1905, annexed to that of December 14th, 1904, together with the extensions aforesaid and the approval of the Attorney General thereon endorsed, are herewith filed. It will be seen from said last contract that the reasons are therein set forth which led the Commission to the conclusion that no alternative remained in the premises except a suit against West Virginia; and they accordingly by and with the advice and approval of the Attorney General undertook to bring such suit and the Depositing Committee agreed as provided in said Act of March 6th, 1900, to accept the amount recovered in such 75
suit or the adjudication therein or any amount realized by your Commission on a compromise with West Virginia in full of all claims on the certificates deposited.

This contract also further provides that all certificates thereafter deposited with Brown Brothers and Company should be included thereunder, and that your Commission should have complete control of all certificates so deposited; and a further and additional receipt or statement was accordingly given your Commission by Brown Brothers and Company bearing date January 4th, 1906, showing that since their statement and receipt of December 4th, 1904, additional certificates to the amount of $1,566,136.77, of which $1,491,231.13 were those of 1871, had been deposited with them and were subject to the control and disposal of your Commission making total deposits to that date $13,173,435.31, of which $10,851,294.09 were those of 1871. This last statement was verified by the oath of William Gerard Vermilye, cashier of Brown Brothers and Company, attached thereto; and on January 5th, 1906, your Commission caused all of these certificates to be removed from the custody of Brown Brothers and Company and placed on deposit for your Commission and subject to their order with the Central Trust Company of New York, N. Y., whose acknowledgment of the receipt thereof stated that the certificates were held on deposit for and subject to the order, control and disposal of your Commission, and the keys to the boxes containing said certificates were delivered to the Secretary of your Commission—Copies of this last named statement of Brown Brothers and Company, with the affidavit of the said Vermilye attached, and of the receipt and acknowledgment of the Central Trust Company are herewith returned.

Your Commission caused these certificates to be removed from Brown Brothers and Company, not from any want of confidence in

them, because your Commission have every reason to believe them to be entirely responsible, but because it was deemed 76
best to place the certificates in the hands of some custodian who never had any connection with the Depositing Committee, and who would be responsible to your Commission alone in connection therewith.

To recapitulate, your Commission will say that the whole amount of the deferred certificates outstanding is $18,227,153.60, as shown in the statement of the Second Auditor, John G. Dew, dated September 17, 1902, and herewith returned, which statement shows also the different classes of certificates.

Of the certificates of 1871, there are in all $15,281,970.47, of which $2,578,518.68 are held by the State through the Sinking and Literary funds, leaving outstanding in the hands of the public $12,703,451.79; and of this last amount there have been deposited with your Commission $10,851,294.09, as above stated.

Of the other certificates there are in all $2,845,183.13, of which the Literary Fund holds $166,943.33, leaving in the hands of the public $2,778,239.80, and of this last amount there have been deposited with your Commission $2,322,141.32 as above stated.

It thus appears that your Commission hold more than five-sixths of all the certificates of 1871 outstanding, and about six-sevenths of all the others outstanding.

It will be noted that since the first agreement of Sept. 18, 1902 was entered into the certificates deposited with Brown Brothers and Company have increased from $10,347,570.83 to $13,173,435.41, which are now in the hands of your Commission; and there is reason to believe that this amount will be still further increased upon the institution of the proposed suits.

Respectfully submitted.

JOHN B. MOON.
J. THOMPSON BROWN.
H. T. WICKHAM.
H. D. FLOOD. 77
H. H. DOWNING.
RANDOLPH HARRISON.
W. F. RHEA.

Attest: JOS. BUTTON, *Secretary.*

AGREEMENT.

This agreement between John Crosby Brown, George Coppell, J. Kennedy Tod and Clarence Cary, herein styled "The 78
Committee," parties of the first part, and such holders of the certificates herein mentioned as deposit hereunder, parties of the second part.

Whereas, the present State of Virginia enacted laws providing for issuing certificates for one-third of the debt of the original State, and more than $12,000,000 of such certificates recite:

"That payment will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of Virginia existing at the time of its dismemberment."

And Whereas, it is believed that West Virginia's proportion of said debt, if ascertained as provided by the Ordinance under which Virginia was divided, is less than the amount of the certificates which have been issued by Virginia; and it is considered that, under such circumstances, neither State should, or will, incur any obligations respecting said debt unless its legislature has an undoubted guarantee that substantially all of the certificates will be promptly surrendered in exchange for whatever amount West Virginia agrees to pay and the creditors of West Virginia may agree to accept.

Witnesseth:

1st. The following gentlemen shall constitute an Advisory Board in this behalf, to-wit: Thomas F. Bayard, W. Pinkney Whyte, Edward J. Phelps and George G. Williams.

The function of said Board is to examine such plan of settlement as may be proposed by the Committee, representing the holders of the certificates, and submitted to them in accordance with this agreement, and to state their recommendation thereof of the contrary.

Said board may add to their number, and any vacancy may be filled by the remaining members. 79

2d. The function of the Committee is:

(*a.*) To bring about the deposit, under this agreement, as far as may be practicable, of said certificates, or of the trust receipts heretofore issued to represent them.

(*b.*) To formulate a plan of settlement, and after it has been recommended by the Advisory Board, cause the same to be published and submitted to depositing creditors for their acceptance as herein provided.

(*c.*) To act as agent of the depositing creditors in carrying out the purposes of this agreement.

(*d.*) The Committee shall appoint one or more depositories to receive said certificates or trust receipts, and issue therefor its proper receipt.

Subject to the restrictions herein, the Committee shall have power to perform any act to accomplish a settlement, and this includes power to make arrangements with either Virginia or West Virginia to insure the prompt surrender of all or any of the certificates in exchange for such amount as West Virginia may pay and her creditors

agree to accept, and also includes power to execute, in behalf of the depositing creditors, any release or acquittance which will exclude any demand on Virginia beyond the amount she may receive from West Virginia; provided that no settlement shall be concluded until it has been recommended by the Advisory Board, and has also been submitted to creditors and accepted as follows, to-wit:

(1.) As soon as a plan of settlement has been recommended by the Advisory Board, the Committee shall, before proposing it to the State, advertise for at least twice a week for three weeks in two of the newspapers published in New York City and 80
London, that a plan of settlement has been formulated, and notifying parties in interest where said plan may be obtained in said cities without cost.

(2.) If, within thirty days after the first publication of said advertisement holders of a majority of the face value of the deposited certificates notify the Committee, in writing, either directly or through any depository, of their unwillingness to accept the proposed settlement, then said settlement shall not be consummated. If the Committee is not so notified within said thirty days, then it shall be assumed that the proposed plan, being satisfactory to a majority, is accepted by all the depositing creditors, and it shall be offered to said States or either of them to be carried into effect by appropriate legislation.

(3.) After a plan of settlement has become effective (of which fact the declaration in writing of the Committee to the several depositories shall be conclusive), each depository shall, in the manner directed by the Committee, surrender to either State, as may be necessary, any or all of the certificates deposited with it, and receive in exchange therefor the amount or kinds of securities called for by the plan of settlement.

The amount so received in settlement shall be immediately delivered to depositing creditors, in accordance with the terms of settlement.

The Committee may arrange for the purchase and sale of such fractional interests as may be necessary to equalize distribution.

(4.) Each depositor shall, when he receives his new bonds, in settlement, pay to the depository, for account of the Committee, such a commission as the Committee may assess for the charges and expenses of settlement, including the compensation of 81
the Committee, Counsel and Advisory Board, but such assessment shall in no event exceed five per cent. in cash on the par of any certificate deposited under this agreement.

If the Committee decide at any time that a settlement satisfactory to holders cannot be promptly effected, they may publish a notice requiring holders to pay so much of twenty cents per $100 of cer-

tificates as may be necessary to reimburse the expenses actually incurred by the Committee. Any certificate, assessment on which is not paid within six months after such notice has been published twice a week for three consecutive weeks in two of the newspapers in New York and London, may be sold by the Depository and the proceeds, after paying its assessment, held for the holder of its corresponding receipt.

Any certificate may be withdrawn from deposit at any time after October 1, 1902, upon payment of its pro rata of expenses, not to exceed twenty cents per $100 of certificates, unless a settlement has been previously arranged, or unless an arrangement has been made with Virginia for obtaining a settlement with West Virginia.

(5.) The Committee may add to their number, and any vacancy may be filled by the remaining members. By unanimous consent of the members of the Committee any member may act by proxy.

In testimony whereof, the Committee have hereto set their hands this 28th day of July, 1898.

An act to provide for the settlement with West Virginia of the portion of the public debt of the original State of Virginia properly to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises. 82

Approved March 6th, 1900.

Whereas the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt

payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates 83
for such proportion of the obligation—surrended by them as was deemed proper to be borne by the State of West Virginia—to-wit: one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia properly to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia, That the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with 84
West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in

amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interests of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

Proposal.

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To the Virginia Commission as constituted under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900:

Whereas your Commission was constituted as set forth in said joint resolution and act of Assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882, and February 20th, 1892.

And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the Board of Education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control of your commission upon the agreement and contract aforesaid, then your commission should 86
be authorized, by and with the approval of the Attorney-

General of Virginia, to take action in the premises as might be needful to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit, as far as practicable, of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the Advisory Board named in said agreement and as should become effective thereunder; it being further stated in said agreements that all the said certificates so deposited would be promptly surrendered in exchange for whatever amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to-wit, $8,565.095.70 and a majority of all the other certificates aforesaid, to-wit, $1,782,-475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, Bankers of New York City, N. Y., the depository named by said Committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

In view of the premises the undersigned, the committee aforesaid do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission,
acting for the State of Virginia under the said joint resolu- 87
tion and act of Assemby aforesaid, that your commission
will enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect—the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said Attorney General take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon shall be accepted in full satisfaction of all the claims of the certificate holders thereunder and the undersigned Committee will surrender to your commission, in exchange for such amount the certificates aforesaid so deposited.

If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia

for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shall be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said Committee under said agreement of July 28th, 1898.

Respectfully submitted,

JOHN CROSBY BROWN, *Chairman.*

ROBERT L. HARRISON, *Secretary.*

Richmond, Va. September 18th, 1902.

The undersigned, Brown Brothers & Company, Bankers of New York City, N. Y., the depository referred to in the foregoing proposal, do hereby certify that they now hold as such depository and subject to the control of the Committee therein referred to, the certificates which are referred to in the foregoing proposal as being deposited with them, to-wit: 88

$8,565,095.70	certificates of	1871
1,782,475.13	" "	1879
		1882
		1892

September 18th, 1902.

BROWN BROTHERS & CO.

In pursuance of a resolution of the Virginia Commission this day unanimously adopted, the foregoing proposition of the Certificate holders Committee is hereby accepted by the said Commission and becomes an agreement between the said Committee and the said Commission.

JOHN B. MOON,

Chairman of the Virginia Commission.

Attest: JOS. BUTTON, *Secretary.*

Richmond, Va., September 18th, 1902.

The above action of the Virginia Debt Commission is approved Sept. 29th, 1902.

WILLIAM A. ANDERSON,

Attorney General of Virginia

Plan for the Settlement of the West Virginia Debt.

Under an agreement of July, 1898, a Committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the same agreement an Advisory Board was constituted whose functions were also specified in the agreement.

In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the Committee and Advisory Board, which among other things, contained the following provision:

"The Committee may surrender to either State (Virginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their pro rata of such an amount in State Bonds, or cash as may be agreed upon between the Committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume on account of her proportion of the debt of the original State."

Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an Act authorizing a commission which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her Attorney General, to take such action and institute such proceedings as might, in the judgment of the Commission and Attorney General be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this Act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the Commission upon an agreement on the part of the holders of such certificates that if the Commission would secure a settlement with West Virginia with respect to said certificates, they would accept the amount realized from West Virginia on such settlement in full of all their claims thereunder. On the 18th of September, 1902, the Committee held 90 on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof, (*) as above stated, and $1,782, 457.13 of all the other certificates, being a majority thereof; and the Committee accordingly on that day entered into a contract with the Virginia Commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the Commission upon the agreement and arrangement on the part of the Commission that they would enter into negotiations with the state of West Virginia for the purpose of effecting a

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

settlement with respect to said certificates, and would by and with the advice and approval of said Attorney General, take such action as they might deem needful in the premises; the amount realized on such settlement to be accepted in full of said certificates as above stated, which contract was duly approved by the Attorney General of Virginia on September 29th, 1902.

In view of this Act of the Virginia Assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended, more definite with respect to the matters now involved; and to this end the following is hereby formulated, approved and recommended by the Committee and the Advisory Board by way of supplement and addition to the original plan:

I. The above named committee shall pledge or deposit the certificates now or hereafter received under the agreement of July 28, 1898, with the Virginia Commission, in conformity with the Act of March 6, 1900, for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the Attorney-General of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided; such pledge or deposit to be for such length of time as may be agreed on; and the said agreement of September 18, 1902, shall continue in force for the period therein specified; and the Committee may enter into such further agreements with the said Commission as may be deemed needful to bring about a settlement in the premises.

II. In the event that no settlement shall be effected by the Virginia Commission either under the agreement of September 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the Committee and the said Commission within such time as may be limited therein, the Committee may, after any and all such agreements with the said Commission shall have expired, take such other and further proceedings and make such other and further agreements and settlement in the premises as the Committee may deem judicious. 91

III. The Committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said Commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

IV. The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different

certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows *as follows;* one member thereof to be appointed by the Committee, one member by the Advisory Board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and converted into money for the purposes of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

New York, December 3d, 1902.

G. G. WILLIAMS,
WM. PINKNEY WHYTE,
WAYNE MacVEAGH,
LYMAN J. GAGE,
Advisory Board.

JOHN CROSBY BROWN,
Chairman Committee.

The following are the affidavits showing publication in two newspapers in London and New York on the notice given 92
under Article 2 of the Agreement of July 28, 1898:

STATE OF NEW YORK, *City and County of New York, ss:*

Thomas Mulhearn being duly sworn, says he is Principal Clerk of the Publisher of the Mail and Express, a daily newspaper published in the city of New York; and that the notice, of which the annexed is a printed copy has been regularly published in the said Mail and Express six times to-wit: January 13th, 16th, 20th, 23d, 27th and 30th, 1903.

THOMAS MULHEARN.

Sworn before me this 25th day of February, 1903.
R. E. A. DON, JR.,
Notary Public, City and County of New York.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph *d*, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement and all parties in interest are notified that the plan may be obtained, without cost in the city of New York, at the office of Messrs. Brown Brothers & Company, 59 Wall Street, and in the city of

London, England, at the office of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C. and 123 Pall Mall, W.

Dated New York, January 13th, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,

Committee.

ROBERT L. HARRISON, *Secretary.*

STATE OF NEW YORK, *City and County of New York, ss:* 93

Theodore L. Peverelly, being duly sworn saith that he is the Principal Clerk of the Publisher of the New York Times, a daily newspaper printed and published in the city and County of New York; that the advertisement hereto annexed has been regularly published in the said New York Times six times to-wit: on January 14, 17, 21, 24, 28, 31st, 1903.

THEODORE L. PEVERELLY.

Sworn to before me this Feb. 25th, 1903.

[SEAL.] EUGENE C. MAUBORGNE,
Notary Public, New York County.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph d, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board, appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the City of New York at the offices of Messrs. Brown Brothers and Company, 59 Wall Street, and in the City of London, England, at the office of Messrs. Brown, Shipley and Company, Founders Court, Lothbury E. C. and 123 Pall Mall, W.

Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,

Committee.

ROBERT L. HARRISON, *Secretary.*

(Copy.) 94

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of London, England, ss:

I, Rowland Lee, Assistant Manager of the Advertisement Department of the Daily Telegraph newspaper, published in the City of London, England, make oath and say that the advertisement "To Depositors of West Virginia Deferred Stock Certificates" attached hereto, was ordered for, and duly appeared in the Daily Telegraph on the following dates: January 15, 19, 22, 26, 29, February 2, 5, 9, 12, 16, 19, 23—all of 1903.

(Signed) ROWLAND LEE.

Sworn before me.

FRANCIS W. FRGOUT,
Deputy Consul-General of the United States of America at London, England, at 12 St. Helens Place, London, England.

March 18, 1903.

Copy of Advertisement Referred to Above.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under the said agreement, and all partied in interest are notified that the plan may be obtained without cost in the City of New York, at the offices of Mess. Brown Brothers & Company, 59 Wall Street, and in the City *City* of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders-court, Lothbury, E. C., and 123 Pall Mall, W.

Dated New York, January 13, 1903. 95

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY.
J. KENNEDY TOD.
BARTLETT S. JOHNSTON.
VIRGINIUS NEWTON.
R. P. CHEW.
Committee.

ROBERT L. HARRISON, *Secretary.*

(Copy.) 96

I, Gilbert Plumbridge, Chief Clerk, in the employment of the proprietors of the Times newspaper, published in the City of London, England, make oath and say that the attached advertisement, "To Depositors of West Virginia Deferred Certificates," was orcered for, and duly appeared in the said newspaper on the following dates: Jan. 14, 17, 21, 24, 28, 31; February 4, 7, 11, 18, 21, all of 1903.

(Signed) GILBERT PLUMBRIDGE.

Sworn before me, Richard Westcott, Vice and Deputy United States Consul-General, at 12 St. Helens Place, London, England, on the 4th, March, 1903.

(Signed) RICHARD WESTCOTT,

Vice and Deputy Consul-General of the United States of America at London, England.

This is the advertisement referred to in the above declaration.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th of July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost, in the City of New York, at the offices of Messrs. Brown Brothers & Company, 59 Wall Street, and in the City of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C., and 123 Pall Mall, W.

Dated New York, January 13, 1903. 97

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD.
BARTLETT S. JOHNSTON.
VIRGINIUS NEWTON.
R. P. CHEW.
Committee.

ROBERT L. HARRISON, *Secretary.*

West Virginia Debt Settlement. 98

Committee.

John Crosby Brown, Chairman. George F. Baker, Advisory Board. W. Pinkney Whyte.

J. Kennedy Tod, Bartlett S. Johnston, Wayne MacVeigh.
Clarence Cary, Wm. C. Legendre, Lyman J. Gage.
R. P. Chew, of West Virginia.
Robert L. Harrison, Secretary.

Depository

Brown Brothers & Company.

Copy

NEW YORK, *Dec. 13th*, 1904.

Messrs. Brown Brothers & Company, Depository:

We, the undersigned Committee, heretofore appointed and constituted under the certain agreement of July 28, 1898, between ourselves and the holders of deposited certificates of indebtedness or securities known as the Virginia Deferred Certificates, hereby declare that the certain plan of settlement made and approved by the undersigned Committee and the Advisory Board, under date of December 3, 1902, became effective by such approval and by the due publication of such plan under the terms of the said agreement and further by reason of the absence of any notification in writing, or otherwise, from or on the part of the holders of any of the deposited certificates, for more than thirty days after the said publication, of any unwillingness to accept such proposed settlement.

(Signed) JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*

The above was received in due form this 13th day of December. 1904.

(Signed) BROWN BROTHERS & CO.

EXECUTIVE DEPARTMENT,
CHARLESTON, WEST VIRGINIA, *January* 27, 1905. 99

To the Honorable President and Members of the State Senate:

GENTLEMEN: The accompanying papers after oral statements had been made to me by a Committee representing the State of Virginia, consisting of Hon. Randolph Harrison, Chairman, Col. Joseph Button, Secretary, and Hon. William A. Anderson, Attorney-General of that State, were duly presented to me for transmission to the Legislature of West Virginia.

The papers consist of an address or statement of the Committee, representing the Commission appointed by the State of Virginia "to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia" and of a copy of the Act of March 6th, 1900, of the State of Virginia, enlarging the powers and duties of said Commission.

I deem it my duty to transmit these papers for your information.

Respectfully yours, ALBERT B. WHITE, *Governor.*

The papers accompanying the communication of the Governor are as follows:

To His Excellency A. B. White, Governor of the State of West Virginia:

SIR: Under and by virtue of a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, a commission consisting of Hons. Taylor Berry, H. T. Wickham, H D. Flood, John B. Moon, Randolph Harrison, H. H. Downing and William F. Rhea was continued for the purpose of opening negotiations with the State of West Virginia looking to the 100 adjustment of the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, and by a communication bearing date on the 7th day of January, 1895, from the Hon. Chas. T. O'Ferral, then Governor of Virginia, the Honorable William A. MacCorkle, then Governor of West Virginia, was informed of this fact.

Since the date last named the Honorable Taylor Berry has departed this life, and Honorable J. Thompson Brown has been made a member of the Commission in his stead. And by an act of the General Assembly of Virginia, approved March 6th, 1900, the powers and functions of the Commission have been materially changed and enlarged, as will be seen by an inspection of said act, a copy of which is herewith submitted.

It will be observed that under the provisions of this act the Commission acting by and with the advice and approval of the Attorney General of Virginia, is authorized to make a final settlement and adjustment with West Virginia with respect to the debt of the original State, provided at least two-thirds in amount of the securities known as Virginia Deferred Certificates issued under the Virginia Act of 1871, and a majority of all the other certificates issued by Virginia with reference to said settlement, exclusive of those held by the Literary Fund and Sinking Fund of Virginia, were deposited with or placed subject to the control of the Commission.

On the 14th day of December, 1904, there were so placed on deposit in the name of the Commission, and subject to the control and

disposal, $12,910,555.89 of such certificates, embracing much more than two-thirds of those of 1871, as aforesaid, and a very large majority of all the others, so that the Commission is now authorized and empowered by and with the advice and approval of the Attorney General, to make a settlement and adjustment with 101 West Virginia as provided in said act of March 6th, 1900. The evidence of the deposit of the said certificates with the Commission as above stated is of course subject to inspection by Your Excellency and the proper authorities of West Virginia on request.

Looking to opening negotiations with West Virginia, the Commission at a meeting thereof, held in Richmond, Virginia, December 14th, 1904, authorized the appointment of a sub-committee, consisting of the undersigned Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who together with the Attorney General of Virginia should invite the attention of Your Excellency to the unsettled matters between the two States and endeavor to negotiate a settlement of the same on some equitable basis to be agreed upon by the authorities of the two States.

The undersigned, the sub-committee so constituted, acting by and with the advice of the undersigned Attorney General of Virginia, therefore beg leave to call to the attention of Your Excellency the unsettled matters between the two States above referred to, growing out of the debt of the original State, and so respectfully request that they may be laid before the legislature of your State, now in session for their consideration; and that some action may be taken by the Legislature of your State for the purpose of entering into negotiations with the undersigned for a settlement between the two States of the matters aforesaid on some equitable basis either by the appointment of a committee to conduct such negotiations on behalf of your State, or by such other action as the legislature of your State may deem appropriate.

And the undersigned further beg in this connection to call attention to the following facts:

1. That when the State of West Virginia was formed, the original State of Virginia was deprived of more than one-third of its white population and about one-third of its territory, em- 102 bracing that portion of its territory which by reason of its mineral wealth has since proven to be the most valuable and productive part of the original State.

2. The ordinance of the convention which met at Wheeling in 1861, in providing for the formation of the State of West Virginia further provided that: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the

moneys paid into the Treasury of the Commonwealth from the counties within said new State during the same period." The obligation to assume an equitable proportion of the said debt was again recognized in the first constitution of West Virginia, which was ratified by a vote of her people in 1863, and in which article eight, section eight provided as follows: "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1961, shall be assumed by this state; and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." The Constitution of West Virginia of 1872, contains these provisions, article ten, section four: No debt shall be contracted by this State except to meet casual deficits in the revenue to redeem a previous liability of the State," etc., etc., and section five specifies that "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt and interest thereon," etc.

3. The public debt of the original State of Virginia, at the time of the dismemberment, amounted to something more than $30,000,000 no part of which has ever been borne by West Virginia, nor has any settlement or adjustment been made by West Virginia, either with the present State of West Virginia, or with the creditors of the Original State, to ascertain what her liability might be with respect to said debt, but the whole of it has been left for adjustment to the people of the present State of Virginia. 103

4. It has been understood that West Virginia was not willing to negotiate directly with the creditors of the original State, and for that reason, and also in order to comply with the requirements of said act of March 6th, 1900, the deposit of said certificates of December 14th, 1904, was made with the Virginia Commission; so that the Commission with the Attorney General of Virginia are now authorized both on behalf of the State of Virginia, and also on behalf of a large majority of all certificate holders interested, to make a final settlement and adjustment of the matters above referred to, and thus finally conclude and dispose of questions which have been long left unsettled to the detriment, it is believed, of both States.

The undersigned only seek to present these matters to Your Excellency and through you to the Legislature of your State, because they believe it to be their duty to their own State to do so; and while no accounting or adjustment in the premises has ever been had by West Virginia, either with Virginia or the creditors of the original State, yet inasmuch as the matters involved are now presented by the undersigned, with new and enlarged powers on their part to make and carry into effect a complete and final settlement between the States, it is hoped that the suggestions herein contained will re-

ceive favorable consideration and action on the part of your Excellency and the Legislature of your State.

Respectfully submitted.

(Signed) RANDOLPH HARRISON
H. H. DOWNING
H. D. FLOOD
JOHN B. MOON
Committee.

Approved:
WILLIAM A. ANDERSON,
Attorney General of Va.

January 25, 1905.

Here follows copy of act of March 6, 1900.

ADDRESS 104

On Behalf of the Virginia Debt Commission

BEFORE

THE JOINT COMMITTEES ON FINANCE OF THE WEST VIRGINIA LEGISLATURE.

In Relation to West Virginia's Contributive Share of the Debt of Virginia.

BY RANDOLPH HARRISON.
Charleston, West Virginia, February 1, 1905.

Mr. Chairman, and Gentlemen of the Finance Committees of the two Houses of the Legislature of West Virginia:

We had the honor a few days ago to present to His Excellency, the governor of West Virginia, a communication in behalf of the State of Virginia in relation to the unsettled matters between the two states, growing out of the debt created before the dismemberment of Virginia. We were officially advised that that communication had been transmitted to the legislature, and by it referred to the appropriate committees for further consideration.

We appear before you tonight in response to an invitation from the two finance committees of this body for the purpose of more fully stating the reasons which impel Virginia to invite your attention to this subject.

It gives us pleasure to avail ourselves of this opportunity to make known to you the object of our mission here.

In considering the question as to West Virginia's obligation to bear a just proportion of the public debt of Virginia, it will be necessary for us to review the origin of that debt, the manner in which and the purposes for which it was created, and West Virginia's relation to the subject.

Beginning with the year 1825 Virginia entered upon an extensive system of internal improvements. She had in mind the development of her western territory. Her statesmen had known for many years prior to that time that the territory now composing
the state of West Virginia contained immense resources of 105
wealth but there had been no definite ascertainment of that fact. They realized that it was essential, in order to ameliorate the condition of her people, who resided in that territory, and in the interest of all the people of Virginia, to develop that section, and establish communication between it and the Virginia seaboard. It was for this purpose that Virginia assumed the burden of a public debt. The development of this system of public improvements was progressive. During the first twenty-five years the debt had grown to about ten millions of dollars; between 1850 and 1861 it was increased by twenty millions of dollars. It is a matter of interest in passing to refer to the fact that the members of the Virginia legislature representing the counties that now compose this State unanimously voted to increase the debt. It is a notable fact that on several occasions it would not have been increased but for the united support of the delegates representing this section of the state, for the eastern and tidewater counties generally opposed the system of internal improvements which Virginia had undertaken. I do not mention this in any critical spirit; it was natural that the residents of this part of the state should want to develop their territory, and I am sure that any one similarly situated at that time would have been governed by the same considerations. The great argument advanced for the increase of the public debt was that, by the development of this section of the state by the construction of turnpikes, canals, bridges, railroads, etc., the wealth of Virginia would be so materially increased that she could bear the burden of the debt without feeling it. And so it came to pass that on the 1st of January, 1861, the public debt of Virginia amounted to about thirty millions of dollars, every dollar of which had been expended in works of internal improvements, the primary object of which was the development of this section of Virginia's territory.

On the 17th of April, 1861, the state of Virginia passed the ordinance of secession, withdrawing from the Union. Shortly thereafter, in the month of May, a number of citizens residing in
the town of Clarksburg, met together and called a convention 106
to meet in Wheeling on the 11th of June following. That convention assembled in Wheeling, and organized what was known as the "Restored Government of Virginia." They ignored the gov-

ernment at Richmond, denounced it as revolutionary, and declared that it did not represent the state of Virginia. On June the 20th this convention elected Francis H. Pierpont governor of Virginia and called a legislature together at Wheeling on July the 1st, 1861, which it declared to be the only true and lawful legislature of the state. This legislature, on July the 9th, elected two United States senators, and provision was made for the election of three congressmen. Both Houses of Congress admitted these members as from the State of Virginia.

A second convention assembled at Wheeling on the 20th of August, 1861. "The Restored Government of Virginia," having been previously organized, this convention, claiming to represent the state of Virginia, met for the purpose of "creating a new state," and on the 20th of August, 1861, it adopted an ordinance declaring it to be the sense of that convention that a new state should be formed "out of a portion of the territory of Virginia," and to embrace the counties specified in the ordinance.

This ordinance contained the following provision as the condition upon which the new state should be created.

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the expenses of the state government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties within said new state during the same period."

This was the first step towards the formation of the state of West Virginia, and in taking this step it was expressly stipulated that the old state would consent to her dismemberment only 107
on condition that the State should assume a just proportion of her public debt.

This convention authorized delegates to be elected to another convention to assemble in Wheeling on the 26th day of November, 1961, for the purpose of forming a constitution for the new state in accordance with the terms of the ordinance of August the 20th. Accordingly a third convention, claiming to represent Virginia, assembled in Wheeling on November 26th, 1861, and prepared a constitution for the State of West Virginia, the eighth section of the eighth article thereof providing as follows:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accrued interest and redeem the principal within thirty-four years."

This provision was adopted in pursuance of the binding ordinance of the organic convention of August the 20th, 1861; it not only pledged the new State to bear a just proportion of the public debt of Virginia, but required her Legislature to ascertain the same and provide for its payment. Does not that seem fair to you? It seems so to me. West Virginia had helped to create the debt, and reaped a share of its benefit. Do you not think in fairness and justice she ought to bear a just proportion of it, as she agreed to do?

On the 3rd day of May, 1862, this constitution was submitted to the people of the counties composing the new State of West Virginia for ratification, and it was duly reported as ratified by a majority of the voters at the polls.

On the 13th of May, 1862, the legislature of the "Restored 108
Government of Virginia" passed an act giving Virginia's consent to the formation of the new state, "under the provisions set forth in the constitution for the state of West Virginia." By that act Virginia expressly stipulated that her consent was given "under the terms stated in the constitution of the state of West Virginia," and this constitution, as we have seen, expressly provided that the new state would bear "its just proportion of the debt of the old state."

The "Restored Government of Virginia" instructed her representatives and senators in Congress to use their influence in furtherance of the passage of an act to create the state of West Virginia.

On the 31st day of December, 1862, the act was passed creating the state of West Virginia. The debates in Congress show that West Virginia would not have been admitted as a state but for her promise to bear a just proportion of the debt of the old state. A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:

MR. OLIN: "I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?"

MR. HUTCHINS: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.'"

MR. CRITTENDEN: "* * * There is another question: the state of Virginia owes a large debt. How is this debt to be divided?"

MR. BLAIR: "The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession."

MR. CRITTENDEN: "I only knew that in this bill there was
no provision made for a division of the said debt. The gen- 109
tleman tells us there is a provision made for it in the constitu-

tion, and I am satisfied with that. As it has been attended to, I have no more to say about it." (Extract from Congressional Globe. 37th Congress, quoted by Hon. J. M. Mason in pamphlet published by him on the subject of the Virginia debt.)

No one can doubt, therefore, that West Virginia owes her existence to her promise to bear a just proportion of the debt of the old state.

The act admitting West Virginia into the Union was signed, as I have stated, on the 31st day of December, 1862, and on June 20, 1863, in pursuance of the proclamation of the president, she took her place in the family of states.

I have given this sketch of the origin of the state of West Virginia in order to show that she is solemnly pledged to bear a just proportion of the debt of Virginia.

The constitution of West Virginia adopted in 1872 contains the following provisions relating to the public debt:

Article X, Sec. 4, provides that no debt shall be contracted except * * * to redeem a previous liability of the state; and sec. 5 provides that the power of taxation shall extend to provisions for the payment of the state debt and interest thereon. There was no public debt for West Virginia to provide for except her obligation to bear her just proportion of the debt of the state of Virginia.

The legislature of the "Restored Government of Virginia" on the 4th of February, 1863, passed an act transferring to the state of West Virginia all the property of the state of Virginia in the territory of the proposed new state, but on condition that West Virginia "should account for it in the settlement to be had with Virginia."

It is hardly necessary for me at this time to refer to the value of the property so transferred. Suffice it to say that by that act several millions of dollars worth of property was transferred to West Virginia; but the transfer was made on the condition that West Virginia should account for it in the settlement to be had 110 with Virginia.

The stock owned by Virginia in banks alone situated within the territory of West Virginia amounted to several hundred thousand dollars, and in respect to this stock West Virginia, in her Constitution of 1863, authorized the legislature to dispose of the same, but expressly provided that the proceeds of such sale should be applied to the liquidation of the public debt; thereby again recognizing in her fundamental law her obligation to share with Virginia the burden of her public debt.

So, gentlemen, I think you must agree with me that West Virginia's obligation to pay a just proportion of the debt of Virginia is the foundation of her political existence. It is an essential part of the very Constitution under which Congress admitted her into the Union. West Virginia has not always been unmindful of her obligation and duty in this respect. After the war an effort was made

by the two states to ascertain by negotiation the fair proportion of the old debt which each should bear. In February, 1870, Virginia sent delegates to Wheeling, West Virginia, then the capital of this state, for the purpose of inviting the governor and the legislature of West Virginia to unite with her in making a statement and settlement of this account. But the governor of West Virginia did not think the time opportune to deal with the subject because the suit between the two states involving the two counties of Jefferson and Berkeley had not then been decided. Soon thereafter the governor of West Virginia sent commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.

I am aware of the fact that at that time some feeling existed on the part of the commissioners of West Virginia as to the manner in which they had been received by the authorities in 111
Virginia; but it is, of course, difficult to determine at this distance the cause for any misunderstanding between those commissioners and Governor Walker. The records only show that the Governor of Virginia felt constrained to decline to appoint commissioners for the reason stated, and renewed his invitation to the State of West Virginia to submit the question to arbitration.

Again in recognition of West Virginia's obligation to Virginia in this matter, the Governor of West Virginia had this to say in a letter dated May 16, 1881:

"The people of this State are willing and anxious to adjust with the mother State the amount of their liability on account of the public debt. The liability can be readily ascertained when the mother state is willing to state the account with us. The convention of the State of Virginia held in Wheeling on the 20th of August 1861, in giving its consent to the formation of this state out of the territory of the mother state, provided by Section IX of the ordinance passed that day as follows:

"The new State shall take upon itself a just proportion of the debt of Virginia prior to January 1, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted and deducting therefrom the moneys paid into the treasury from the counties included within the new state during the same period."

"The validity of this ordinance and the convention which passed the same has received the sanction of every department of the national government.

The Supreme Court of the United States, in a suit in that court

instituted by the state of Virginia against West Virginia to recover jurisdiction over the counties of Jefferson and Berk- 112
ley, now a part of this state, adjudged said ordinance valid and binding. This state was admitted in pursuance of this ordinance. We admit it is binding authority, and hold ourselves ready at all times to settle with our mother state on that basis. Our obligation is to the mother state, and not to creditors of that state." (Extract from letter published by Hon. J. M. Mason in a pamphlet by him on the subject of the Virginia debt.)

So, gentlemen, you perceive that the public authorities of West Virginia in the past fully acknowledged the binding obligation resting on your state to bear a just proportion of the debt. That obligation is none the less binding now than it was then.

Nothing having resulted from the efforts of the two states to ascertain and adjust their respective liabilities, Virginia felt obliged to make some arrangement for the funding of her debt. The war had intervened and left her prostrate and impoverished, but still she recognized her duty to make a fair adjustment with her creditors who had purchased her bonds when her credit was higher than that of any other state, and to that end, on the 30th of March, 1871, her Legislature enacted what is known as the Funding Bill.

By the terms of this act Virginia assumed responsibility for two-thirds of the Debt. The act provided that a new bond should be issued for two-thirds of each old bond, and that a certificate should be given to represent the other one-third, to bear interest at six per cent., and await payment until Virginia and West Virginia had come to a settlement; and Virginia agreed to hold the old bond, so far as unfunded, in trust for the holder of said certificate.

The debt of Virginia at that time, with interest added, amounted to about forty-five millions of dollars, of which Virginia assumed as her just proportion, two-thirds, or about thirty millions of dollars. The form of the certificate issued, as provided by the Funding Bill was as follows:

Copy of Certificate under Act of March 30, 1871.

"COMMONWEALTH OF VIRGINIA. 113

No. ——. $ ——.

TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest amounting to $—. Payment of said one-third with interest thereon at the rate of six per

cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the state of Va. and W. Va in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and the State of Va. holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"——— ———,

"Treasurer of the Commonwealth of Virginia.

"——— ———,

"Second Auditor of Virginia."

Under the foregoing act about fifteen million dollars of these certificates were issued, and the old bonds were delivered up and are now held by Va., so far as unfunded, in trust to secure the payment of said certificates. These certificates do not in terms release Va from liability for their payment; they clearly import that there would be a settlement between Va. and W. Va., and that they would be paid when such settlement was had. Va. undoubtedly intended that when a settlement was had the certificate holders must accept W. Va.'s share in full payment of the unsettled one-third of the debt; but under the form of the certificate it might be contended that Va. was liable for the difference between the face of the certificates and the amount ascertained to be due by W. Va. Hence you will observe that it is of the greatest importance to Virginia to bring about, if possible, a settlement of this controversy, not only because it is a duty she owes the creditor, but especially for 114 her own protection.

In 1879 the legislature of Virginia passed another act for the funding of her debt by which provision was made the issuance of new bonds to take the place of those outstanding. With the bonds so issued certificates were issued for the unsettled one-third of the debt similar in form to the certificates of 1871, with this important difference, namely, that it was expressly stipulated in the certificate that its acceptance should be a full and absolute release of Virginia from all liability on account of said certificates. While the certificates issued under the act of 1879 imposed no liability, therefore, on Virginia they nevertheless provided that Virginia would aid the creditors holding such certificates, or certificates issued under previous acts, in negotiating with West Virginia for a friendly settlement of the claims of such creditors against the State of West Virginia.

In 1882 a third act for the funding of Virginia's debt was passed and under that act the certificates issued to represent the unpaid one-third of the debt expressly provided that they should be accepted without recourse on Virginia for their payment. These certifi-

cates, therefore, like those issued under the act of 1879, impose no liability on Virginia.

By act approved on the 20th of February, 1892, Virginia made a full and final settlement with her creditors and the certificates issued under this act, like those issued under acts of 1879 and 1882, expressly provided that they should be accepted without recourse on Virginia and hence they impose no liability on Virginia.

In as much as the unsettled one-third of the debt of the original state of Virginia is represented by the foregoing four classes of certificates, it becomes important to know the amount of those certificates outstanding.

The office of the second auditor of Virginia shows as follows in respect to these certificates: 115

Under the act of March 30, 1871, there were issued of these certificates	$15,281,970.47
Of these certificates Virginia holds in her sinking fund and in her literary fund	2,578,518.68
Leaving outstanding in the hands of the public of the certificates of March 30, 1871	$12,703,451.79

The foregoing certificates do not in terms release Virginia from liability for their payment.

Under the act of March 28, 1879, there were issued and are outstanding in the hands of the public, certificates amounting to	$ 564,258.87
Under the act of February 14, 1882, there were issued of these certificates	1,775,603.48
Of these certificates Virginia holds in her sinking fund	166,943.33
Leaving outstanding in the hands of the public	$1,609,660.15
Under the act of February 20, 1892, there were issued certificates outstanding in the hands of the public	$605,320.78

The three last mentioned classes of certificates were issued and accepted without recourse on Virginia.

The total issue of certificates, therefore, representing the unpaid one-third of the debt of the original state of Virginia is	$18,227,153.60
Of that amount Virginia holds in her sinking fund and in her literary fund	2,745,465.01
Leaving outstanding in the hands of the public of all classes of certificates	$15,481,691.59

A debt or claim of that magnitude cannot be disposed of by ignoring it, or attempting to waive it aside. The only way to dispose finally of it is to settle it.

Realizing the importance to her own interests of bringing about a friendly settlement of the matter, and in fulfillment of her promise to the creditors to aid in bringing it about Virginia, by resolution of March 6, 1894, appointed commissioners for the 116
purpose of negotiating with West Va. for an adjustment of the proportion of the debt proper to be borne by her.

In January, 1895, Governor O'Ferrell of Virginia communicated a copy of that resolution to Governor McKorkle of W. Va. No response was ever made by W. Va., but we learned through the press that your legislature declined to negotiate with Va. on the basis stated in the resolution creating her commission. We think the purpose and intent of that resolution was misunderstood, but at all events, nothing was done.

Subsequently, by an act of the General Assembly of Va., approved March 6, 1900, the powers of this commission were materially enlarged and the commission was authorized under the terms stated in the act to conclude a settlement with W. Va. or to take such action to that end as might be approved by the attorney general of Va. Under the provisions of this act the commission acting by and with the advice and approval of the attorney general of Va., is fully empowered to make final settlement with W. Va., provided at least two-thirds of the certificates of 1871 and a majority of all the other certificates outstanding in the hands of the public were deposited with or placed subject to the control of the commission. The requirements of that act have been complied with in a manner which far exceeded our most sanguine expectations, for there have been deposited, subject to the control of the commission, more than five-sixths of the entire issue of the certificates. This unexpected and desirable result has been brought about through the instrumentality of Brown Brothers & Co., bankers of New York, the agents of the certificate holders' committee. The standing of this house is doubtless known to you, or certainly to many of you; it does not engage in "frenzied finance," but on the contrary it is known as one of the most reliable and responsible firms in the financial world.

Through the agency of Brown Bros. Co. more than five-sixths of all the certificates outstanding in the hands of the public have been assembled and are held on deposit subject to the control of the Virginia commission under an agreement with the owners 117
of those certificates to accept whatever may be received from West Virginia in full discharge of the unsettled one-third of the debt of Virginia.

Of the certificates of 1871 outstanding in the hands of the public (amounting to $12,703,451.79) Brown Bros. & Company now hold $10,639,776.42.

Of the certificates of 1879 outstanding in the hands of the public (amounting to $564,258.87) Brown Bros. & Company now hold $440,642.61.

Of the certificates of February 14, 1882, outstanding in the hands of the public (amounting to $1,608,660.15) Brown Bros. & Company now hold $1,285,680.55.

Of the certificates of February 20, 1892, outstanding in the hands of the public (amounting to $605,320.78) Brown Bros. & Company now hold $544,456.31.

The aggregate amount of all certificates held by Brown Bros. & Company is, therefore, $12,910,555.89.

The Virginia commission has full power and authority to deliver up those certificates as an entirety to be cancelled upon payment by West Virginia of whatever may be ascertained to be her just proportion of the debt of Virginia—be it much or little. We stand ready, of course, to exhibit the evidence of the deposit of those certificates with us to the proper authorities of West Virginia.

The contract under which these certificates are deposited subject to the control of the Virginia Commission, will expire in September 1905, unless, in the meantime, negotiations for a settlement, or some action looking to that end, have been undertaken.

At a meeting of the Virginia commission held in Richmond on December 14, 1904, a sub-committee was appointed who, together with the attorney general of Virginia, were requested to communicate these facts to the governor and legislature of West Virginia, and invite their co-operation in a friendly adjustment 118
and settlement of the account between the two states. Our visit here is in discharge of the duty assigned us. Do not imagine that Virginia has the slightest intention of meddling with the affairs of West Virginia, or of volunteering advice. She has ventured to bring the subject to your attention in compliance with her undertaking to the creditors, and especially because her own interests are involved. Virginia felt that she would be derelict in her duty to herself and in her duty to your state if she failed to bring to your notice the exceptional opportunity now presented to dispose finally of this vexatious question.

Is there any reason why West Virginia should not join Virginia in stating this account? I am sure, gentlemen, you cannot dissent from the proposition that your state is liable for some part of the debt, whatever the amount may be. As far as it is possible for a state to be committed by the solemn provisions of its organic law and by the repeated declaration of its public authorities, West Virginia is bound—bound in equity and good conscience—to bear whatever may be ascertained to be her fair proportion of the debt of Virginia. No account has ever been stated between the two states. How then can West Virginia declare that she owes no part of this debt until the account is stated? She is solemnly pledged to state this ac-

count. Ought she not to redeem this pledge? No state can refuse to do what is fair and right in respect to her public obligations and not suffer for it. We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount that will end the matter. We only ask that your state will through the proper authorities, unite with Virginia in stating the account between the two states in order that the question of her liability, if any, may be authoritatively ascertained. The 119
work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises.

Would any one of you, if a man thought he had an honest claim against you, be afraid to meet him and consider it with him? Then why should you hesitate to commit your state to the same course in this respect which you as an individual would not hesitate to take?

West Virginia has always taken the position that her liability on account of this debt was to Virginia and not to the creditors, and that her liability must be ascertained on the basis of the Wheeling ordinance. This ordinance not only committed West Virginia to bear her just proportion of the debt of Virginia, but states how the account shall be stated in order to ascertain the amount of the debt for which West Virginia is liable. We are ready to unite with you in stating the account on the basis of the Wheeling ordinance, or West Virginia may choose any other just and equitable basis, if she prefers, on which the account shall be stated, and we will abide by her choice. We have no interest whatever in this matter except to discharge our duty to our state by bringing about, if possible, a fair and final settlement of this controversy. Unless the two states can dispose of it we may confidently expect it to be referred to the courts for settlement, and in that event the decision of the court has already been plainly foreshadowed. In the case of Hartman *v.* Greenhow (decided October term, 1880), 102 U. S., page 672, the Supreme Court reviewed the legislation of Virginia in relation to her public debt, and in referring to West Virginia's liability for a portion of it the court, through Justice Field had this to say:

"It appears from the statutes to which we are referred—and we know the fact as a matter of public history—that prior to the late civil war Virginia had become largely indebted for moneys borrowed to construct public works in the state. The moneys were obtained upon her bonds, which were issued to an amount exceeding $30,000,000. Being the obligation of a state of large wealth, 120
which never allowed its fidelity to its promises to be questioned anywhere, the bonds found a ready sale in the markets of the country. Until the civil war the interest on them was regularly and promptly paid. Afterwards the payments ceased, and until

1871, with the exception of a few small sums remitted in coin during the war to London for foreign bondholders, or paid in Virginia in Confederate money, and a small amount paid in 1866 and 1867, no part of the interest or principal was paid. During the war a portion of her territory was separated from her, and by its people a new state, named West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were thus taken from her jurisdiction. But, as the whole state had created the indebtedness for which the bonds were issued, and participated in the benefits obtained by the moneys raised, it was but just that a portion of the indebtedness should be assumed by that part which was taken from her and made a new state. Writers on public law speak of the principle as well established that where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: "If a state should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligations fulfilled by all the parts in common." (I Com., 26.) And Halleck, in speaking of a state divided into two or more distinct and independent sovereignties, says: In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of the courts, and the practice of nations." (Internat. L., ch. 3, sec. 27.)

"In conformity with the doctrine thus stated by Halleck, both states—Virginia and West Virginia—have recognized in their constitutions their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement. * * *

"The Constitution of West Virginia, which went into effect in 1863, declared that "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," should "be assumed" by the state, and that the legislature should "ascertain the same as soon as practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (Art. 8, sec. 8.)

Virginia lost by the formation of the state of West Virginia one-third of her territory and more than one-third of her white population. To that extent she was deprived of possessions which belonged to her when the debt was contracted. Suppose fifty of the remaining counties of Virginia should decide to organize themselves into a new

state to be called "Eastern Virginia;" would you say it was fair and right for them to do so and take the public property within their borders, and leave the remaining counties constituting the state of Virginia to bear the burden of a debt created for the benefit of the whole? The Supreme Court of the United States has, 121
as we have just seen, answered that question in the negative, and I am sure your sense of justice would impel you also to answer "No." In that event you could not justify West Virginia in declining to bear a just proportion of the debt of the mother state.

Another decision of the Supreme Court of the United States has an important bearing on the liability of the two states on account of this debt. I refer to the recent decision of South Dakota against North Carolina (decided February 1, 1904), 192 U. S., page 286.

North Carolina had issued certain bonds which were outstanding in the hands of purchasers. She declined to make provision for their payment, feeling that she was justified in that course. In order to test the liability of North Carolina a holder of a large amount of those bonds donated ten of them of the face value of $10,000.00 principal to the state of South Dakota, with the understanding that South Dakota, would institute suit against North Carolina to enforce payment. An individual cannot sue a state, but the right of one state to sue another is expressly preserved by the Constitution of the United States. South Dakota accepted the gift and instituted suit in the Supreme Court of the United States against North Carolina, and the court gave judgment against North Carolina for the amount of the bonds with accrued interest.

If when the contract under which we hold control of the certificates expires nothing has been done looking to a settlement, and those certificates should be released and restored to the owners, it may prove to be the opening of a veritable Pandora's box. Under the authority of the South Dakota-North Carolina case, the attempt might be made to enforce collection of this debt by donating some of the certificates of the issue of 1871 to a state on condition that a suit should be instituted against Virginia and West Virginia to compel the settlement of the account between them, and the payment of the liability apportioned to each one. We are reliably informed that the governor of one of the states has already 122
been approached with an offer to donate to his state $100,000.00 of those certificates on condition that he would cause such a suit to be instituted. He declined, but some other governor might not be influenced by as delicate sense of propriety.

We feel that these considerations should appeal strongly to you to unite with Virginia in the effort to make a friendly settlement of this matter. Surely the two states can make a far better settlement than the courts can make for them. If we do not take the matter in our own hands the only alternative is a settlement by compulsion.

Resolutions that we do not owe anything will not avail. The holders of a debt amounting to about fifty millions of dollars will not be satisfied with your statement or with ours that we do not owe it. Unless your state will join Virginia in the effort to dispose finally of this question, you may rest assured that, like Cæsar's ghost, it will meet you at Philippi. The unsettled one-third of this debt now amounts to about fifty millions of dollars. No one can say what the extent of West Virginia's liability will be if the controversy is settled in court, but I will venture the assertion that in a friendly adjustment, it is entirely probable that we can effect a settlement within one-tenth of that sum. In this connection I cannot forbear a reference to what Virginia has done towards bearing the burden of this debt. The records of the office of the second auditor of Virginia show the following amounts paid by Virginia on account of the public debt of the old state since January 1, 1861:

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Amount of interest paid from January 1, 1861, to January, 1905		$34,551,642 85
Bonds now held in sinking fund	$1,111,500 00	
Bonds paid off and cancelled	8,863,994 49	
		9,975,441 49
Total of interest and bonds paid off		$45,527,134 34*
New bonds of Virginia issued for portion of debt funded and assumed by her		26,850,820 00
Total sum of principal and interest paid off and assumed and now carried by Virginia on account of the old debt		$72,377,954 34*

From the foregoing you will observe that the public debt of Virginia is now $26,850,820.00, and on this sum she pays an annual interest charge of $877,862.27. (Report of the second auditor of Virginia for 1904 in relation to the public debt.)

Do you not think that Virginia has borne her share of this common burden, especially in view of the trials and adversity through which she has passed? During four long years she withstood the shock of battle, and came out of that trying ordeal crushed, impoverished and dismembered. Then followed the night of reconstruction, when for five years she endured the bitterness and humiliation of military rule. But so soon as she regained control of her own affairs she met her creditors and, in spite of her poverty, endeavored to do her duty by them.

In adjusting her liability with her creditors and providing for its payment she has done all that she could do, and no more could be

*[Errors in addition:
The first result should be $44,527,084 34.
The second result should be $71,377,904.34.]

expected of her. The trials and sacrifices through which she has passed have left no trace of bitterness—least of all does she cherish any resentment against her youngest daughter. On the contrary, she rejoices in the wealth and power with which a benignant Providence has blessed you. She only appeals to you not to let pass the present golden opportunity to finally dispose of the only remaining question in connection with her public debt. She earnestly hopes that her suggestion will commend itself to your good judgment, and that your legislature will authorize the appointment of commissioners, with power to co-operate with us in stating the account between the two states. If, however, your action shall be 124
unfavorable, Virginia will feel that she has done her duty, and that responsibility for the consequences will not lie at her door.

In taking leave of you, gentlemen, I cannot refrain, on behalf of myself and associates, including the attorney general, an eminent citizen of my state, from expressing to you our sincere appreciation of the cordial reception accorded us here not only by His Excellency, your governor, but by your committees to-night. I can assure you that whatever may be the result of our mission we will recall with pleasure the considerate attention you have shown us.

Memorandum of agreement, made this 14th day of December, 1904, between the Depositing Committee of the securities known as the Virginia Deferred Certificates as constituted under the contract of July 28, 1898, and of which John Crosby Brown is Chairman, and Robert L. Harrison, Secretary, acting under the plan of settlement approved on December 3rd, 1902, by the Advisory Board referred to in the said contract, hereinafter referred to as the Depositing Committee, party of the first part, and the Commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Assembly of the State of Virginia, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900, and of which John B. Moon is Chairman, and Joseph Button is Secretary, hereinafter referred to as the Virginia Commission, party of the second part: 125

Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the Depositing Committee Aforesaid to the said Virginia Commission, and were placed subject to the control of the said Commission upon the agreement and arrangement on the part of the said Commission acting for the State of Virginia under the said joint resolution and Act of Assembly aforesaid, that the said Commission

should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, in accordance with the said contract of July 28th, 1898, and in accordance with such plan of settlement as was then proposed or might thereafter become effective, and that the said Commission would, by and with the advice and approval of the Attorney General of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it
was agreed that the amount realized thereon should be ac- 126
cepted in full satisfaction of all the claims of the certificate-holders thereunder, and that the said Committee would surrender to the said Commission, in exchange for such amount, the certificates so placed subject to the control of said Commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said Committee under the said contract of July 28, 1898, and that the said agreement should constitute an arrangement and contract between the said Committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th day of September, 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and,

Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, Attorney General of Virginia, by his endorsement at the foot thereof on the 29th day of September, 1902; and

Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd day of December, 1902, by the Advisory Board referred to in the said contract of July 28, 1898, as appears by the plan of settlement made and approved by the said Committee and the Advisory Board and bearing date December 3rd, 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notification whatsoever was given to the said Committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed set-
tlement as set forth in the said plan so published and more 127
than thirty days having elapsed after the said publication

was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the Committee having been duly made to the only depository under the said contract, to wit Messrs. Brown Brothers & Company, of 59 Wall Street, New York, the said plan of settlement thereupon became effective and final; and

Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modification thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia Commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia Commission by and with the advice and approval of the said Attorney General under the said Act of the General Assembly of Virginia March 6, 1900:

Now therefore this agreement witnesseth: that the aforesaid Depositing Committee does hereby authorize and direct their said Depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia Deferred Certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission in pursuance on the said joint resolution and Act of the General Assembly of Virginia; and to this end the said Messrs. Brown Brothers & Company are authorized and instructed to issue such certificate to the said Virginia Commission in such 128
form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said Commission:

But this agreement shall continue in force only until the said 18 day of September, 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia Commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said Depositing Committee, unless a settlement shall have been before that time negotiated with West Virginia in pursuance of said contract of September 18th, 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable

basis which has been agreed to by said Commission and the authorities of West Virginia aforesaid. Provided, however, that it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be taken or instituted by the said Commission in the premises, as may hereafter be agreed upon by the parties and the indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

In testimony whereof the signatures of the Chairman of the said Depositing Committee and of the Virginia Commission, attested by the respective Secretaries thereof, are hereunto affixed on the day and year first above written.

JOHN CROSBY BROWN, *Chairman.*

ROBERT L. HARRISON, *Secretary.*

JOHN B. MOON.
Chairman of Virginia Commission.

JOSEPH BUTTON, *Secretary.*

129 The foregoing agreement is hereby approved as having been entered into by my advice and approval.

Dated December 14, 1904.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

130 The foregoing agreement of December 14th, 1904, together with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st, 1905, and they shall remain in full force until that date just as if December 1st, 1905, instead of Sept. 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, enlargement and modification on or before Dec. 1st, 1905, in all respects as therein specified.

Given under our hands this 9th day of Sept. 1905.

JOHN CROSBY BROWN.
Chairman Depositing Committee.

ROBT. L. HARRISON, *Secretary.*

JOHN B. MOON.
Chairman Virginia Commission.

JOS. BUTTON, *Secretary.*

The above extension of the contracts above referred to is hereby approved this 9th day of September, 1905.

WILLIAM A. ANDERSON.
Attorney General of Virginia.

Upon the execution of the foregoing contract of December 14, 1904, hereto annexed, Messrs. Brown Bros. & Co., Bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47 were held by said Brown Bros. & Co. on deposit for and subject to the control and disposal of said Commission; thus placing subject to the complete control and disposal of the Commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large majority of the total of $2,778,239.80 of the other certificates so outstanding. 131

Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted sub-committee acting with the Attorney General of Virginia, made to the Governor and Attorney General of West Virginia, and to the Finance Committees of the Legislature of that State, which was then in session, a full statement and presentation of the matters outstanding and unsettled between the two States in connection with the deferred certificates aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the Legislature of West Virginia would, at least, appoint a Committee or other public functionery with authority to take up the questions involved for the purposes of discussion and negotiation, but the Commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all thus leaving to the Virginia Commission and Attorney General of that State no possible means of bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the Court having jurisdiction of controversies between States. 132

Now, therefore, it is hereby stipulated and agreed by and between the Depositing Committee, named as the party of the first part in the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said Commission acting in this behalf by and with the advice and approval of the Attorney General of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

1st. Neither the said foregoing contract of December 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the first day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

2nd. The certificate or certificates heretofore given by Brown Bros. & Co., the depository of the said Committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said Commission and shall remain in full force and effect without regard to time limit and the said Brown Bros. & Co. shall issue and give to the said Commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal of the said Commission for the purpose of carrying out this 133 agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the Commission; and the said Virginia Commission are hereby given and invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co., as aforesaid.

3rd. The said Virginia Commission hereby stipulate and agree, by and with the advice and approval of the Attorney General of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for an adjudication and settlement by that Court of the matters aforesaid unsettled and undetermined between the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the Act of the General Assembly of Virginia, of March 6th, 1900, referred to in said contract of December 14th, 1904; and the said Virginia Commission acting by and with the advice and approval of the Attorney General of that State, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of

obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said 134
Court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said Act of the General Assembly of Virginia and the Joint Resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the Commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said Commission, notwithstanding the institution and pendency of such suit.

4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said Joint Resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said Commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said Commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on ac- 135
count of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

5th. It is further understood and agreed that if from any cause the said Commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said Commission to restore to the control of the said Depositing Committee all such deferred certifi-

cates as may have been placed subject to the control and disposal of said Commission as aforesaid.

Richmond, Va., November 24th, 1905.

JOHN CROSBY BROWN, *Chairman.*
R. P. CHEW,
WM. C. LEGENDRE,
CLARENCE CARY,
J. KENNEDY TOD,
GEO. F. BAKER,
BARTLETT S. JOHNSON,
Depositing Committee.

JOHN B. MOON,
WM. F. RHEA,
H. D. FLOOD,
H. H. DOWNING,
H. T. WICKHAM,
RANDOLPH HARRISON,
J. THOMPSON BROWN,
Virginia Commission.

Attest:

JOS. BUTTON,
Sec't'y Va. Commission.
RO. L. HARRISON,
Secretary Committee.

The foregoing contract of this date was entered into by 136
and with the advice and approval of the undersigned, William A. Anderson, Attorney General of Virginia, as in said contract stated and set forth; and the same is concurred in by him as such Attorney General.

Richmond, Va., November 24th, 1905.

(Signed) WILLIAM A. ANDERSON,
Attorney General of Virginia.

This is to certify that we, the undersigned, Brown Broth- 137
ers & Company (Bankers), of 59 Wall Street, New York City, N. Y., have received of the Commission of the State of Virginia, constituted and authorized to act with respect to the securities known as the Virginia Deferred Certificates under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and an act of the said General Assembly approved March 6, 1900, and of which John B Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is secretary, the following Virginia Deferred Certificates, which we hold on deposit for and subject to the control and disposition of said Commission, to-wit:

Certificates of 1871:			
Principal		$9,317,009.30	
Sterling scrip	$10,666.66		
Dollar scrip	32,387.00	43,053.66	
			$9,360,062.96
Certificates of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Certificates of 1882:			
Principal		$716,416.07	
Scrip		545,787.36	
			1,262,203.43
Certificates of 1892:			
Principal		$259,825.71	
		$284,563.93	
			544,389.64
			$11,607,298.64

And we further agree to hold on deposit for and subject to the control of said Commission as aforesaid such further certificates as may be deposited with us through or for the said Commission, between this and the 18th day of September, 1905.

Given under our hands this 14th day of December, 1904.

BROWN BROTHERS & CO.

Brown Brothers & Co., 59 Wall Street. 138

West Virginia Debt Settlement. (C)

NEW YORK, *January 23rd, 1905.*

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR:—Since we gave you the receipt and certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under act of	1871,	to amount of	.....	$1,279,713.46
do.	1882,	do.	.....	23.477.12
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,303.257.25

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,596,402.76	
Sterling scrip	$10,666.66		
Dollar scrip	32,707.00	43,373.66	
			$10,639,776.42
Issue of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Issue of 1882:			
Principal		$738,819.72	
Scrip		546,860.83	
			1,285,680.55
Issue of 1892:			
Principal		$259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 23rd, 1905			$12,910,555.89

B. B. & CO.

Brown Brothers & Co., 59 Wall Street. 139

West Virginia Debt Settlement. (T.)

NEW YORK, *January 4th, 1906*

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and Certificate of Deposit of December 14th, 1904, there have been deposited with us and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under the act of	1871,	to amount of	.....	$1,491,231.13
do.	1879.	do.	.....	23,250.00
do.	1882,	do.	.....	51,588.97
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,566,136.77

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and Certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,806,785.43	
Sterling scrip	$10,666.66		
Dollar scrip	33,842.00	44,508.66	
			$10,851,294.09
Issue of 1879:			
Principal		$ 426,612.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			463,892.61
Issue of 1882:			
Principal		$ 757,653.05	
Scrip		556,139.35	
			1,313,792.40
Issue of 1892:			
Principal		$ 259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 4th, 1906			$13,173,435.41

BROWN BROTHERS & CO.

STATE OF NEW YORK,

County of New York, To-wit: 140

I, Wm. Gerard Vermilye, being first duly sworn, do depose and say that I am one of the Cashiers of Brown Brothers & Co., bankers of New York, N. Y., and have charge of their vaults and of the securities therein deposited, including the securities known as Virginia deferred Certificates, and that I have had charge of the filing

of said certificates deposited with said Brown Brothers & Co. and of the keeping of a record thereof as filed; and that the statement or certificate of the said Brown Brothers & Co. hereunto annexed made to John B. Moon, Chairman of the Virginia Debt Commission, bearing date January 4th, 1906, correctly sets forth the said Virginia Deferred Certificates so deposited and placed in the vaults of said Brown Brothers & Co. which said certificates to the amount set forth in said statement of Brown Brothers & Co. have been by order of the said Virginia Commission this day placed in sealed boxes and transferred to the Central Trust Company of New York, N. Y.

WM. GERARD VERMILYE.

The foregoing affidavit was this day subscribed and sworn to by Wm. Gerard Vermilye before me, a Notary Public in and for the State and County of New York.

Given under my hand and Notarial Seal this 5th day of January, 1906.

LEGRAND VAN VALKENBURGH,
Notary Public, Kings County.

[NOTARIAL SEAL.]

Certificate filed in New York County.

Central Trust Company of New York. 141

54 WALL STREET, *January 5th, 1906.*

The undersigned, the Central Trust Company of New York, N. Y., hereby certifies and acknowledges that it has this day received from Brown Brothers & Co. three boxes under seal said to contain the Virginia Deferred Certificates to the amount of $13,173,435.41 referred to in the communication of said Brown Brothers & Company to John B. Moon, Chairman of the Virginia Commission, bearing date January 4th, 1906, which said sealed boxes and their contents are held by the undersigned Trust Company on deposit for and subject to the order and control of the Virginia Commission, constituted and authorized to act with respect to said Deferred Certificates under a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, and an act of the said General Assembly approved March 6th, 1900, of which John B. Moon,, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is Secretary, the said certificates having been turned over to the undersigned Trust Company by said Brown Brothers & Company to be held by the undersigned on deposit for and subject to the control and disposal of said Virginia Commission as above stated.

CENTRAL TRUST CO., OF N. Y.,
(Signed) F. L. GRANT, *Sec'y.*

Virginia, Second Auditor's Office. 142

(Statement Made Sept. 17, 1902.)

West Virginia Certificates Issued by Virginia in Funding Her Debt.

			In hands of the public
Act March 30, 1871	$15,281,970 47		
" " " " held by Com.			
" " " " sinking fund	2,026,439 39		
" " " " literary fund	552,079 29		
		$2,578,518 68	
			$12,703,451 79
Act March 28, 1879			564,258 87
Act Feb. 14, 1882		$1,775,603 48	
Held by literary fund		166,943 33	
			1,608,660 15
Act Feb. 20, 1892			605,320 78
Total amount in the hands of the public			$15,481,691 59
Total amount held by the Com. S. Fund			2,026,439 39
Total amount held by the literary fund			719,022 62
Total amount of W. Va. script issued			$18,227,153 60
In hands of public		$15,481,691 59	
Held by State of Virginia		2,745,462 01	
Total issue of W. Va. script		$18,227,153 60	

I hereby certify that the above statement correctly sets forth the amount of West Virginia certificates, issued by Virginia in funding her old obligations, as shown by the books of this office.

(Signed) JNO. G. DEW,

Second Auditor of Virginia.

Supreme Court of the United States

OCTOBER TERM 1907

No. 7.

ORIGINAL

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PETITION AND DEMURRER

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

Commonwealth of Virginia,
vs.)
State of West Virginia.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly submitted that, by an examination of the bill of complaint in this cause, it will be observed that there is nothing in said bill contained showing a controversy between said Commonwealth of Virginia and said State of West Virginia justifiable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer, and that a day may be fixed by your Honors for the hearing of the same.

_____
Governor of West Virginia.

_____
Attorney General of West Virginia.

_____,

_____,

_____, *Counsel.*

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

The demurrer of the State of West Virginia, defendant above named, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General of said State of West Virginia, to the bill of complaint of the Commonwealth of Virginia, complainant, by William A. Anderson, Attorney General of said Commonwealth of Virginia.

The defendant, the State of West Virginia, above named, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, or in any way or manner, demurs thereto, and for the cause of demurrer shows:

First: The jurisdiction of this Court does not extend to the character of demands, alleged in the bill in this cause, being in substance simple demands for money, and this Court could not enforce a judgment for money against one of the sovereign states of the Union of the United States in any way or manner.

Second: The bill on its face shows that the said Commonwealth of Virginia has no suable interest in the demands for money set out therein which would entitle her to the relief prayed for therein and that the said demands if recovered would be only for the benefit of certain individuals, who are the holders of the alleged evidences of debt mentioned in said bill.

Third: The bill on its face shows that so far as said Commonwealth of Virginia may have any ownership of any of such alleged evidences of debt, the acts of the Legislature of said Commonwealth, claimed by the said Attorney General thereof as authority to institute this cause, do not in fact authorize any suit therefor to be instituted, but only authorizes, if any authority at all is given, action on the part of the Commission in said bill mentioned and

said Attorney General for the benefit and at the expense of the individuals in the bill and exhibits called "Certificate holders," which is in effect giving the use of the name of said Commonwealth to such "Certificate holders," for the purpose of attempting to collect their alleged private money demands against said State of West Virginia.

Fourth: The said bill does not sufficiently and definitely set out therein the alleged demands for money claimed therein, so that a complete and proper answer can be made thereto.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

Governor of West Virginia.

Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss.

This day there personally appeared before me, the undersigned Clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing demurrer and being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as Clerk of said Court and the official seal thereof —— day of October, 1906.

Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Attorney General of West Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE AND AMENDED DEMURRER.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE.

TO THE COMMONWEALTH OF VIRGINIA AND WILLIAM A. ANDERSON, *Attorney General:*

You are hereby notified that the defendant, The State of West Virginia, will, on Monday, February 25, 1907, or as soon thereafter as the motion can be made, ask leave of the court to file an amended demurrer in the above-entitled cause. A copy of said proposed amended demurrer is hereto attached.

FEBRUARY 16, 1907.

Supreme Court of the United States

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn amended demurrer herewith presented to the bill of complaint in the above-entitled cause, and asks that a day may be fixed by your Honors for the hearing of the same.

And, as in duty bound, your petitioner will ever pray.

____ ____,
Governor of West Virginia.

____ ____,
Attorney General of West Virginia.

____ ____,
____ ____,
____ ____,
Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

AMENDED DEMURRER.

The defendant, The State of West Virginia, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, of said State, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in manner and form as the same are set forth and alleged, or in any way or manner, presents this amended demurrer thereto, and for cause of demurrer shows:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill, that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and deter-

mined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and considered.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia, in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

Wherefore, and for divers other good causes, of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

W. M. O. DAWSON,
Governor of West Virginia.
CLARKE W. MAY,
Attorney General of West Virginia

State of West Virginia,
County of Kanawha, ss:

This day there personally appeared before me, the undersigned clerk of the Supreme Court of Appeals of the State of West Virginia William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing amended demurrer, and, being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that

the foregoing amended demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as clerk of said court and the official seal thereof this 23rd day of February, 1907.

WM. B. MATHEWS,
Clerk of the Supreme Court of Appeals
of the State of West Virginia

I, Clarke W. May, Attorney General of the State of West Virginia hereby certify that in my opinion the foregoing amended demurrer is well founded in point of law.

CLARKE W. MAY,
Attorney General of West Virginia.

Supreme Court of the United States

No. 7, Original—October Term, 1906.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

IN EQUITY.

OPINION OF THE COURT.

Delivered By Mr. Chief Justice Fuller.

May 27th, 1907.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

ORIGINAL No. 7.

COMMONWEALTH OF VIRGINIA
vs.) *In Equity.*
STATE OF WEST VIRGINIA.

[May 27, 1907.]

This is a bill filed, on leave, February 26, 1906, by the Commonwealth of Virginia against the State of West Virginia.

The bill averred that—

"On the first day of January, 1861, complainant was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose; but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

"In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

"The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

"(2) That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentalities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio River, that the Commonwealth of Virginia, in the first quarter of the Nineteenth Century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio River, since the first day of January, 1861, has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvments. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

"(3) The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvements, in a very large measure for the purpose of developing the aforesaid

resources of the western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear from an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been a fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

"4. The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

"5. On the 17th of April, 1861, the people of Virginia, in gener-

al convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the 'Restored State of Virginia,' and will be hereafter referred to in this bill as the 'Restored State.'

"6. On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to 'provide for the formation of a new State out of the portion of the territory of this State;' Section 9 of which ordinance was as follows, to-wit:

'9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.'

"7. On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein; and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

"8. Pending the admission of the State of West Virginia to the

Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

'That all property, real, personal and mixed, owned by, or appertaining to the state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.'

'That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.' ''

Complainant charged "that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

"9. And by a further act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

'1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out

of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

'2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.'

"And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

"10. The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union, contained the following provisions:

"By Section 5 of Article VIII. of said Constitution it was provided:

'5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability to the State, to suppress insurrection, repel invasion, or defend the State in time of War.'

"And by section 7 of Article VIII. it was provided:

'7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.'

"And by section 8 of Article VIII. it was provided:

'8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.'

"At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed,

any 'public debt' or 'previous liability,' except for her just, contributive proportion of the public debt of the original State of Virginia, and for money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By Section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt 'except to meet casual deficits in the revenue, to redeem a previous liability of the State,' &c., and there was not and could not have been any such 'previous liability,' except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized the sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her.

"11. After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settlement of any kind was ever had between the two States in regard to this debt.

"12. The efforts looking to a settlement by the concurrent action of the two States having proved abortive and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

"The first of these was made by the General Assembly which was chosen at the close of the period of 'destruction and reconstruction,' which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

"The purpose of the representatives of the Commonwealth, then just emerging from conditions which had improverished her people and paralyzed their productive energies, to assume and pay to the utmost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

"By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,0000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

"It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

"13. As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy-one Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to as Exhibit Number 7.

"It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution toward the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

"It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of

the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

"A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

"14. By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the some with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

"Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

"Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

"15. All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph 1 of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of

indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master who shall take the accounts hereinafter prayed for.

"16. Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

"For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

"17. In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereafter prayed for to be taken between the two States; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

"18. Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

'First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia

did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

'Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

'Third. The State of West Virginia has further, by the repeated enactments and joint resolutions of her legislature, recognized her liability for a just proportion of this debt.

'Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property amounting in value to many millions of dollars, and held and enjoyed the same, but upon express condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

'Fifth. While the transfer of this property, real and personal, and also certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of 'The Restored Government of Virginia,' there were in fact represented in said 'Restored Government' and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.'

"19. The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: 'A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,' approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

"Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

"The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled 'An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,' the purpose of which Act is sufficiently set forth in its title, and a copy of the act will also be hereinafter shown as one of the exhibits herewith filed.

"20. The Commission acting under said last mentioned act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill."

21. Enumerates exhibits attached to the bill and prayed to be regarded as part thereof.

22. The bill prayed: "Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as

may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet."

Attached to the bill were the numerous exhibits referred to.

The State of West Virginia demurrred and assigned special causes as follows:

"First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

"Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

"Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

"Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

"Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

"Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

"Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee to an account or to a discovery from this defendant.

'Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

Hearing on the demurrer was had March 11, 12, 1907.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The State of West Virginia was admitted into the Union June 20, 1863, under the proclamation of the President of the United States of April 20, 1863, in pursuance of the act of Congress approved December 31, 1862, upon the terms and conditions prescribed by the Commonwealth of Virginia in ordinances adopted in convention and in acts passed by the General Assembly of the Restored Government of the Commonwealth, giving her consent to the formation of a new State out of her territory, with a constitution adopted for the new State by the people thereof. The ninth section of the ordinance adopted by the people of the Restored State of Virginia in convention assembled in the city of Wheeling, Virginia, on August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," provided as follows:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia. . ."

The consent of the Commonwealth of Virginia was given to the formation of a new State on this condition. February 3 and 4, 1863, the General Assembly of the Restored State of Virginia enacted two statutes in pursuance of the provisions of which money and property amounting to and of the value of several millions of

dollars were, after the admission of the new State, paid over and transferred to West Virginia. The Constitution of the State of West Virginia when admitted contained these provisions, being sections 5, 7 and 8 of Article VIII thereof, as follows:

"5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

"7. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt and hereafter the State shall not become a stockholder in any bank."

"8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

The "public debt" and the "previous liability" manifestly referred to a portion of the original debt of the original State of Virginia and liability for the money and property of the original State, which had been received by West Virginia under the acts of the General Assembly above cited, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia, though one may be involved in the other; while the provisions of sections 7 and 8 were obviously framed in compliance with the conditions on which the consent of Virginia was given to the creation of the State of West Virginia, and the money and property were transferred. From 1865 to 1905 various efforts were made by Virginia through its constituted authorities to effect an adjustment and settlement with West Virginia for an equitable proportion of the public debt of the undivided State, proper to be borne and paid by West Virginia, but all these efforts proved unavailing, and it is charged that West Virginia refused or failed to take any action or do anything for the purpose of bringing about a settlement or adjustment with Virginia.

The original jurisdiction of this court was, therefore, invoked by Virginia to procure a decree for an accounting as between the two States, and, in order to a full and correct adjustment of the accounts, the adjudication and determination of the amount due Virginia by West Virginia in the premises.

But it is objected that this court has no jurisdiction because the

matters set forth in the bill do not constitute such a controversy or such controversies as can be heard and determined in this court and because the court has no power to enforce and therefore none to render any final judgment or decree therein. We think these objections are disposed of by many decisions of this court. *Cohens* v. *Virginia*, 6 Wheat. 264, 378, 406; *Kansas* v. *Colorado*, 185 U. S. 125; *Kansas* v. *Colorado*, May 13, 1907, 206 U. S. p. ; *Missouri* v. *Illinois*, 180 U. S. 208; *Same case*, 200 U. S. 496; *Georgia* v. *Copper Company*, May 13, 1907, 206 U. S. p ; *United States* v. *Texas*, 143 U. S. 621; *United States* v. *North Carolina*, 136 U. S. 211; *United States* v. *Michigan*, 190 U. S. 379.

In *Cohens* v. *Virginia*, the Chief Justice said: "In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and the citizens of another State,' 'and between a State and foreign States, citizens or subjects.' If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

And, referring to the Eleventh Amendment, it was further said:

"It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases and in these a State may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment were persons who might probably be its creditors. There was not much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was no reason to retain the jurisdiction of the court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended

to suits commenced or prosecuted by individuals, but not to those brought by States."

By the cases cited and there are many more, it is established that, in the exercise of original jurisdiction as between States, this court necessarily in such a case as this has jurisdiction.

United States v. *North Carolina* and *United States* v. *Michigan*, *supra*, were controversies arising upon pecuniary demands, and jurisdiction was exercised in those cases just as in those for the prevention of the flow of polluted water from one State along the borders of another State, or of the diminution in the natural flow of rivers by the State in which they have their sources through and across another State or States, or of the discharge of noxious gases from works in one State over the territory of another.

The object of the suit is a settlement with West Virginia, and to that end a determination and adjudication of the amount due by that State to Virginia, and when this court has ascertained and adjudged the proportion of the debt of the original State which it would be equitable for West Virginia to pay, it is not to be presumed on demurrer that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the Legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered.

It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of Virginia to West Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia when admitted into the Union contained the provision: "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by the State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a sinking fund and redeem the principal within thirty-four years." And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled "An act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State," by which consent was given to the creation of the proposed new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto an-

nexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861;" and that by the act of Congress the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two States. The act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided "for the formation of a new State out of the territory of this State," and declared therein that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its Legislature should "ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the "Legislature shall ascertain" was that the Legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained. And it may well be inquired why, in the forty-three years that have elapsed since the alleged compact was entered into, West Virginia has never indicated that she stood upon such a compact, and, if so, why no step has ever been taken by West Virginia to enter upon the performance of the duty which such "compact" imposed, and to notify Virginia that she was ready and willing to discharge such duty.

It is also urged that Virginia had no interest in the subject-matter of the controversy because she had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on the first day of January, 1861. This relates to the acts of the General Assembly of Virginia of March 30, 1871, March 28, 1879, February 14, 1882, February 20, 1892, March 6, 1894, and March 6, 1900. According to the bill, Virginia by the act of March 30, 1871, and subsequent acts, in an attempt to provide for the funding and payment of the public debt, having estimated that the liability of West Virginia was for one-third of the amount of the old bonds, provided for the issue of new bonds to the amount of two-thirds of the total, and for the issue of certificates for the other third, which showed that Virginia held the old bonds so far as unfunded in trust for the holders or their assignees to be paid by the funds expected to be obtained from West Virginia as her "just and equitable proportion of the public debt." The legislation resulted in the surrender of most of the old bonds to Virginia, satisfied as to two-thirds, and held as security for the creditors as to one-third. We do not care to take up and

discuss this legislation. We are satisfied that as we have jurisdiction, these questions ought not to be passed upon on demurrer. *Kansas* v. *Colorado*, 185 U. S. 125, 144, 145. And this also furnishes sufficient ground for not considering at length the objection of multifariousness. The observations of Lord Cottenham, in *Campbell* v. *Mackey*, 1 Mylne & Craig, 603, that it is impracticable to lay down any rule as to what constitutes multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must be left where the authorities leave it, to the sound discretion of the court, have been often affirmed in this court. *Oliver* v. *Piatt*, 3 How. 333, 411; *Gaines* v. *Relf*, 2 How. 619, 642. But we do not mean to rule that the bill is multifarious. It is true that the prayer contains, among other things, the request "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix in her own right and as trustee aforesaid," but it also prays that the court "will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises." And we understand the reference to holding in trust to be in the interest of mere convenience, and that the bill cannot properly be regarded as seeking in chief anything more than a decree for "an equitable proportion of the public debt of the Commonwealth of Virginia on the first day of January, 1861." The objections of misjoinder of parties and misjoinder of causes of action may be treated as resting on matter of surplusage merely, and at all events further consideration thereof may wisely be postponed to final hearing. *Florida* v. *Georgia*, 17 How. 491, 492; *California* v. *Southern Pacific Company*, 157 U. S. 249.

The order will be—

Demurrer overruled without prejudice to any question, and leave to answer by the first Monday of next term.

[ORDER OVERRULING DEMURRER.]

Supreme Court of the United States.

No. 7, ORIGINAL, OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA.

vs. Complainant.

STATE OF WEST VIRGINIA.

This cause came on to be heard on the bill of complaint and the demurrer of the defendant thereto, and was argued by counsel. On consideration whereof, It is now here ordered by the Court that said demurrer be, and the same is hereby, overruled without prejudice to any question, and leave is hereby granted the defendant to file answer on or before the first Monday of the next term.

May 27, 1907.

Supreme Court of the United States

OCTOBER TERM 1907

ORIGINAL No. 7.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

ANSWER OF WEST VIRGINIA.

In the Supreme Court of the United States

ORIGINAL NO. 7.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

ANSWER OF WEST VIRGINIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of West Virginia, by William M. O. Dawson, Governor, and Clarke W May, Attorney General, by leave of this Honorable Court, to the bill of complaint exhibited against said State of West Virginia by William A. Anderson, Attorney General, for and on behalf of the State of Virginia.

This defendant, now and at all times hereafter saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or so much thereof as this defendant is advised is material or necessary for her to make answer to, answering, says:

I.

That she believes it is true as alleged that on the first day of January, 1861, plaintiff was indebted in "about" the sum of $33,000,000, upon obligations and contracts made in connection with the construction of works of internal improvement within her then

territory; and it may be true that the greater part of said indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for said purpose; and it may also be true that all her liabilities, though arising under contracts made before that date, had not then been covered by bonds issued for their payment; but as to this allegation respondent has no knowledge or information except what is derived from said bill. This respondent denies that there was in addition to the above mentioned liability to the general public any other indebtedness evidenced by bonds held by and due to the Commissioners of the Sinking Fund and Literary Fund of the said State of Virginia as created under her laws, amounting the former to $1,462.993, and the latter to $1,543,669.05, or to any other sums, as of the same date, as in the said bill is alleged, because this defendant avers that the commissioners of these two funds were and are mere State agencies, and public officials of the State, created by said State of Virginia to have the custody of and to preserve certain of her financial resources and obligations to be made available for specific purposes when necessary, and which now belong exclusively to Virginia and are held for her sole and exclusive use and benefit. Respondent denies that any of the bonds or certificates so alleged to be held by the Commissioners of the Sinking Fund and the Literary Fund were ever negotiated or sold by the State of Virginia, or that the same constituted a part of the public debt of that State on the first day of January, 1861, and denies that the certificates representing one-third of such bonds are now a part of the said public debt; and respondent avers that the State of Virginia has long since voluntarily canceled all of said bonds and the same are no longer of any force or validity.

II.

It is true as alleged that said portion of the territory which now constitutes the present State of Virginia was, prior to January 1, 1861, devoted mainly to agriculture, and, to some extent, to grazing and manufacture, which afforded its chief source of revenue at that time; but this defendant avers that the territory which now composes the State of Virginia was largely underlaid with rich and valuable minerals only awaiting the opportunity and means of development to make the said State exceedingly wealthy in varied mineral resources such as coal, iron, manganese and other valuable and marketable products, and the said State abounded at that time in large forests of valuable timber which have since developed into a great source of revenue to the said State and its citizens. It is true that the portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in un-

developed stores of mineral and timber, and respondent avers that the same was inaccessible and of very little value on the first day of January, 1861, and during all the years prior thereto, and that it has been only within recent years that the development of said resources has been begun in the said State of West Virginia, and this required the outlay of many millions of dollars, since January 1, 1861, in the construction of railroads and other public works and the appropriation by the Congress of the United States of many more millions of dollars for the improvement of her waterways in order to afford an outlet for her mineral and other products. This respondent denies that the prime object of the State of Virginia in entering upon a system of interval improvement was to hasten and facilitate the development of the resources of wealth and revenue in West Virginia by the construction of graded roads, bridges, canals and railways extending through the then State of Virginia from tidewater toward the Ohio river, and avers that the main object of said system of internal improvements was to afford the eastern part of the State an outlet for its own products to the Ohio river on the west and to the seaboard on the east, and to afford convenient communication with those points so as to create a market for such products at points on the eastern coast of Virginia at tidewater, and thus open up and develop the resources of the territory now constituting the State of Virginia, and not, as alleged in said bill, for the purposes of developing the resources of the western part of her territory, now constituting the State of West Virginia. This respondent further says that it is true as alleged in said bill that the larger portion of these public works was constructed east of the Appalachian range of mountains and within the present territorial limits of Virginia, and respondent avers that nearly all of the money derived from the sale of the bonds was in fact expended in the development and improvement of what now constitutes Virginia, and only a comparatively small sum was expended in developing, and improving the portion now composing West Virginia; that these expenditures in Virginia were of very little practical benefit to the people living in the western part of the State up to and including the first day of January, 1861. This respondent further says that it is true that property values within the limits of West Virginia have been largely increased since 1861, but denies that such increase was caused by the improvements made within her present territory prior to 1861, but nearly all of the improvements and developments of resources in said State have been made within the last twenty-five years and are due to railroads and other public works constructed by her own people and by private capital brought within her territory and by appropriations made by Congress, and are almost entirely disconnected and independent of any expenditures made by Virginia prior to January 1, 1861, either by

the proceeds of bonds issued and sold by her or from any other means derived from the creation of any debt by her. Respondent admits that the money appropriated and the payment of the annually accruing interest on said debt prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof was derived from taxes imposed upon property subject to taxation throughout the entire state, but respondent avers that the large amount thus derived from taxation to which the present State of West Virginia, then a part of Virginia, contributed her full share, was not kept intact by the State of Virginia after her ordinance of secession from the union in the year 1861, but was used by her in the administration of the so-called State Government at Richmond and for many other purposes while she claimed to be a part of the Confederate States of America, and that the part of the Sinking Fund so expended should be accounted for to this State and constitute a credit to her in the settlement of her equitable proportion of said debt; this respondent calls upon the State of Virginia to show what the aggregate amount of said Sinking Fund was on the first day of January, 1861, and of what it consisted, together with the interest thereon since accruing, and that she shall be required to give credit to this respondent for the amount contributed thereto by her prior to January 1, 1861, in case this court shall determine that an accounting shall be had between the said States in this action.

III.

This respondent denies that the Commonwealth of Virginia was induced to enter upon the construction of her general system of improvement, in a very large measure, for the purpose of developing the aforesaid resources of the western portion of the State, now constituting the State of West Virginia, and thereby as alleged in said bill, ameliorating the condition of her citizens residing therein, and denies that it was with this view that she took upon herself the alleged burden of her public debt, for which her bonds were issued, without which debt, it is alleged, said improvements could not have been undertaken. The respondent avers that Virginia appropriated to her own use, within the territory now constituting the present state of Virginia, about nine-tenths of all the money derived from the proceeds of said bonds, and that this large part of said proceeds enured to the sole benefit of the people living in what now constitutes the State of Virginia, while the territory now constituting the State of West Virginia received but a small proportional part thereof, and that all the money appropriated was expended under and by direction of the officers of the State of Virginia who were elected and controlled by the voters then living within the present limits of that State.

It may be true that a majority of the representatives residing in that part of Virginia now composing the State of West Virginia voted for the appropriations for the said public improvements, but if so, it was with the expectation and belief that an equitable proportion thereof would be expended in their section of the State which, as hereinbefore averred, was not done; and at the times when said debt was created the Legislature was in the absolute control of the very large majority of members chosen by the people living within what now constitutes the State of Virginia and they could, and actually did, control the legislation of the State.

IV.

It may be true that the development of this system of public improvements was, from its character and extent, progressive, as is alleged, and that the same extended with the general growth and increasing needs of the State, and was incomplete in 1861; but this respondent denies that prior to that time a very considerable portion of such improvements had been constructed in the territory now constituting West Virginia in order to meet the needs of the people of that portion of the State for their local purposes. On the contrary, the principal object of the State in entering upon this system was for the construction of a canal from the James River to the Ohio River for the purpose of connecting the Virginia seaboard with the western waters, the building of certain railroads projected in the same direction and in certain other directions, all within the present territorial limits of the State of Virginia, and for the construction of highways and bridges and certain public buildings, nearly all of which were located and constructed within the present limits of the State of Virginia. It is true, as alleged, that the expenditures of this money were under the direction and control of the Board of Public Works, the members of which were elected by the voters of the State at large, but respondent avers that this Board of Public Works was at all times composed of a majority of members residing within the present limits of Virginia and that only such members were chosen as were acceptable to the people residing within the present limits of Virginia and to promote their views and interests as to the method and policy of the expenditures of said moneys.

V.

It is true that on the 17th day of April, 1861, the people of Virginia in general convention assembled adopted an ordinance by which it was intended to withdraw Virginia from the union of the States, and it is also true that a considerable portion of the people

of Virginia dissented from this action and that a great majority of the people residing in the territory now composing the State of West Virginia opposed the action thus taken by the people of Virginia then residing within the present territorial limits of that State, and representatives of the people organized a separate government within the territorial limits of Virginia, known and recognized by the people now living within the State of Virginia as the "Restored State of Virginia;" and this government was thereafter recognized by the executive and all the other departments of the United States Government and treated as the State of Virginia until long after the close of the Civil War.

VI.

It is also true that on the 20th day of August, 1861, the State of Virginia, in a convention assembled at the city of Wheeling, adopted an ordinance "to provide for the formation of a new State out of a portion of the territory of this State," and that section nine of said ordinance is in the following words:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private right and interests in lands within the proposed State derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of West Virginia."

Section ten of said ordinance provided as follows:

> "When the General Assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the Union of States."

The same ordinance also provided for a convention of the people to be held within the territorial limits of the then State of Virginia by representatives to be selected by a popular vote of the people within the limits of the proposed new State to adopt a constitution

for such proposed new State, and the said convention assembled at Wheeling in November, 1861, and framed a constitution which was thereafter duly ratified by a vote of the people, which constitution contained the following provision relating to the public debt of the State of Virginia:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

Subsequently, on the 13th day of May, 1862, an act was passed by the legislature of Virginia giving the consent of that State to the formation and erection of the proposed new State within the jurisdiction and territorial limits of said State of Virginia. Section one of this act provided as follows:

> "That the consent of the Legislature of Virginia be, and the same is hereby, given to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, (and many other counties) according to the boundaries and under the provisions set forth in the Constitution of the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Section three of said act provided:

> "Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this Commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the union."

The respondent avers that said act was transmitted to the senators and representatives of Virginia in Congress. A correct copy of the same is attached to this answer and made part thereof as "Exhibit No. 1."

VII.

This respondent further says that the allegations contained in Paragraph VII of said bill with reference to the act of Congress and the admission of the State of West Virginia into the Union are true.

VIII.

This respondent for further answer to said bill says it is true that pending the admission of the State of West Virginia into the Union the general assembly of the Commonwealth of Virginia passed the act of February 3, 1863, which is set forth in Paragraph VIII of said bill; but this respondent denies that the property which was by this act appropriated and transferred from the Commonwealth of Virginia to the State of West Virginia amounted in the aggregate to several millions of dollars on the 3d day of February, 1863, as in said bill is alleged, and denies that the State of West Virginia realized and received into her treasury from the sale of bank stock alone about $600,000 as is in said bill alleged.

Respondent denies that she is chargeable for or on account of the transfer of said property, except the stocks of companies or corporations and the credits, or for any part thereof, otherwise than in a settlement with the State of Virginia for this respondent's just proportion of the public debt of that State as provided in the said ordinance of August 20, 1861, and in the said act of February 3, 1863; and respondent avers that she is not chargeable in any settlement for or on account of such stocks or credits with any sum in excess of the actual market value of the same at the times when they were transferred to her; and she avers that at the times when such stocks and credits were transferred they were greatly depreciated and were of but little value.

IX.

Respondent admits the passage of the act of February 4, 1863, as alleged in Paragraph IX of said bill, but denies that she received or that it was intended by said act that she should receive any money except such as had then been collected, or might be thereafter collected, within the territory constituting the present State of West Virginia prior to the admission of the State into the Union, and she denies that she is legally or equitably liable to the plaintiffs for any part thereof, or that said act of the Legislature imposed, or purported to impose, any liability upon her or was so intended or understood. Respondent avers that after the Wheeling Convention and the passage of the ordinance providing for the formation of a new State, the Restored State of Virginia con-

tinued to impose and collect taxes in the territory now composing the State of West Virginia until the admission of that State into the Union, and a small part of the money realized by such taxation was returned to the new State under the said act of February 4, 1863, and no other money was appropriated or received under that act.

Respondent avers that nearly the entire amount of revenue collected by the "Restored State of Virginia," prior to the admission of West Virginia into the Union was collected from the counties now constituting the latter State, and that much the largest part of it was expended by the said state government outside of those counties, and that it was only just and equitable that such surplus as might remain at the time of admission into the Union should be restored to her in order that she might be able to install her government, establish courts and preserve order within her limits; and this just and equitable claim was recognized by Virginia when the said act was passed.

X.

This respondent, for further answer to said bill, says that it is true that the Constitution of the State of West Virginia contained the provision, among others, set forth and alleged in Paragraph X of said bill, but this respondent denies that the terms "public debt" or "previous liability" referred to either the property or money formerly belonging to the State of Virginia which had been transferred to and received by West Virginia under the acts of the general assembly of the Commonwealth of Virginia set forth in Paragraph VIII and Paragraph IX of said bill, for the reason that said constitution was adopted long before the said acts of the general assembly of Virginia were passed, and before the act passed in May, 1862, by the said general assembly of Virginia giving her consent to the formation of the proposed new State out of the territory within her limits. This respondent therefore denies that anything contained in sections 5, 7, or 8 of Article VIII of the Constitution of West Virginia, adopted in 1861, bears any such construction, or is susceptible of any such meaning, as is given thereto by the allegations contained in Paragraph X of plaintiff's said bill.

XI.

This respondent for further answer to said bill says that she denies that the Commonwealth of Virginia made attempts at different times to ascertain and settle the equitable proportion of her public debt to be borne by West Virginia, upon the terms and in the manner contemplated by section nine of the ordinance adopted

by the convention of the State of Virginia on the 20th day of August, 1861, in section eight of Article VIII of the Constitution of West Virginia, or in the manner prescribed by either of said instruments. The facts relating to the efforts of the Commonwealth of Virginia and the State of West Virginia to make an adjustment of the liability of the latter State, if any such liability exists, between the year 1865, when communications between the two States was re-established, and the year 1872, are as follows:

Prior to December, 1866, the Commonwealth of Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. The effect of the pendency of this suit for over four years was to prevent a satisfactory adjustment of West Virginia's liability for the payment of an equitable proportion of the public debt of Virginia as provided in said ordinance of the Wheeling Convention because of the fact that West Virginia's boundaries could not be known and therefore it could not be determined what amount of money had been expended within her limits for public works or other purposes prior to the 1st day of January, 1861. 11

Respondent avers that the Governor of West Virginia in his message to the legislature in January, 1866, recommended that Commissioners be appointed to settle with the Commonwealth of Virginia respecting the said public debt; but no action was taken by the legislature of West Virginia of 1866 for the reason that the authorities of Virginia had made, at that time, no provision for a settlement, so far as was known to the authorities of West Virginia.

In his message to the legislature of West Virginia in 1867, the Governor again directed the attention of that body to the subject of the adjustment of the said public debt, stating that he was informed that Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the General Assembly of Virginia: First for the purpose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On the 28th day of February of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of the commonwealth of Virginia, but expressed the willingness of the citizens of West Virginia to effect a prompt and equitable settlement between the States and directed the Governor as soon as the said suit in the Supreme Court of the United States, relating to the counties of Berkeley and Jefferson, had been disposed

of, to appoint three commissioners on the part of West Virginia to treat with the Commissioners of Virginia upon the matter of adjusting the public debt of that State as provided in the ordinance of 1861, and the Constitution of West Virginia, adopted by the convention which assembled in November, 1861, and also requiring a report of their action to the Governor in order that the same might be communicated to the legislature of West Virginia for its action.

In January, 1868, the Governor of West Virginia informed the legislature in his annual message that the commissioners had not been appointed under the resolution because the suit in relation to the counties of Berkeley and Jefferson had not been disposed of. But in February of that year the Committee on Claims and Grievances of the House of Delegates, upon the petition of one of Virginia's creditors asking that the State of West Virginia provide for the payment of certain bonds of the State of Virginia of which he claimed to be the bona fide holder, reported that the settlement of West Virginia should be with the State of Virginia and not with the creditors of Virginia. And again in his message of 1869 to the Legislature of West Virginia the governor referred to the subject of the settlement of the public debt of Virginia and stated that commissioners had not been appointed by him up to that time owing to the fact that the suit between the States was still pending. The State of Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of the State of West Virginia, the governor of West Virginia, by communication dated February 24, 1870, advised the Legislature of West Virginia of the passage of that act by Virginia, and thereupon the Legislature of West Virginia, on the 1st day of March, 1870, appointed a joint committee of the two Houses of the Legislature to confer with the Virginia Commissioners and report to the Legislature, provided, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit in equity brought against her by the commonwealth of Virginia as hereinbefore stated, which was still pending in this court.

Afterwards, on March 3, 1870, the governor of West Virginia was authorized by the Legislature to appoint three resident citizens of the State to treat with the authorities of the Commonwealth of Virginia upon the subject of the proper adjustment of the public debt of that State, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson; but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their ap-

pointment was passed on the last day of the session of the Legislature, the Governor of West Virginia again in his message of 1871 stated that no appointment had been made owing to the lack of funds to pay the expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, on February 20, 1871, through the Governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the public debt of that State, the arbitrators not to be citizens of either State, each State to appoint two arbitrators and the two to select an umpire if deemed necessary. This proposal made by the Commonwealth of Virginia was submitted to the Legislature of West Virginia on the 17th day of February, 1871, but on the 15th day of February, 1871, two days prior to the communication of this action of the General Assembly of Virginia, the Legislature of West Virginia had passed a joint resolution authorizing the Governor to appoint three disinterested citizens of the State to treat with the authorities of the Commonwealth of Virginia upon the subject of the adjustment of the public debt of that State existing prior to the 1st day of January, 1861, to report on various matters relating to the creation of the debt; upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk.

The proposal of Virginia relating to arbitration was referred by the Legislature of West Virginia to a joint special committee of the two Houses, which committee reported a preamble and joint resolution rejecting the tender of arbitration made by the Governor of Virginia because the adjustment of the debt should be subject to the ratification of the legislatures of the two States and because citizen commissioners from both States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. The said joint resolution also invited the Commonwealth of Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners, therefore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the General Assembly of the Commonwealth of Virginia; and the Governor of West Virginia was also directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. Accordingly, in pursuance of this resolution, the Governor of West Virginia appointed three commissioners to negotiate with the State of Virginia for a settlement of West Virginia's equitable part of the public debt. After their appointment the said commissioners

proceeded to Richmond, where all the accounts, vouchers and other evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible, but realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of the Commonwealth of Virginia soliciting specifically the necessary information. To this request on the part of the Commissioners of West Virginia, the said second auditor made a reply in which he declined to furnish the information desired, a copy of which reply is herewith filed as "Exhibit No. 2" and made a part of this answer.

The failure and refusal of Virginia to co-operate with the said commissioners placed them at a great disadvantage in the examination of the records at Richmond, and they therefore obtained only such facts and figures as to enable them to make an imperfect report to the Governor of the State of West Virginia with reference to said public debt, showing the part of said public debt for which, in their opinion, according to such information as they could procure, West Virginia was liable.

Respondent avers that by reason of the inability of said commissioners to procure from the State of Virginia the necessary information concerning the public debt and other matters connected therewith, their report was not only very incomplete and inaccurate, but it appeared therefrom, that in making their investigations they wholly disregarded the provisions of the ordinance of the Wheeling Convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed and respondent avers that for these and other reasons the conclusions of said commissioners were not agreed to or accepted by the Legislature of West Virginia; but subsequently the Senate of West Virginia proceeded to make an investigation of the subject through its Finance Committee, of which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. Said committee made a report on the 22nd day of December, 1873, from which it appeared that the State of West Virginia upon a settlement with the Commonwealth of Virginia based upon the provisions of section nine of the ordinance passed by the commonwealth of Virginia at the Wheeling Convention did not owe to the said Commonwealth of Virginia anything whatever, but that, on the contrary, the said Commonwealth was indebted to West Virginia on account of said debt on the 1st day of January, 1861, in the sum of $512,000, not including interest. A copy of said report is filed herewith, and made a part hereof as Exhibit 3.

The State of West Virginia has never receded from the provisions

contained in section nine of the Wheeling Ordinance with reference to the settlement of this respondent's just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State; and the resolutions adopted by her Legislature in recent years in which she declared that she did not owe the State of Virginia anything on account of said public debt were based upon the said report of the Senate Committee made in 1873 as aforesaid, and upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance as the just and true one upon which a settlement between the two States could legally and equitably be made.

After the proposition of the Commonwealth of Virginia to select arbitrators, which was declined by the State of West Virginia as hereinbefore stated the said Commonwealth of Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt until the adoption of a joint resolution approved March 6, 1894, after she had compromised and settled with her creditors and been released from all liability, which resolution provided for the appointment of a commission of seven members who were thereby authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter State's part of the public debt proper to be borne by her, but which also expressly provided that such commission should not proceed with such negotiations until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under the acts hereinafter referred to, that they desired the said commission to enter into and undertake such negotiations and would accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by the State of Virginia; and it was also provided in said resolution that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which, as recited in said resolution she had already provided for as her equitable proportion thereof. Under the aforesaid resolution no negotiations were proposed to West Virginia until the year 1895 and then only upon the conditions prescribed in the joint resolution of 1894, which has never yet been repealed or modified in this respect; and negotiations were again offered by Virginia in 1906 but upon the same condition, that West Virginia should enter upon such negotiations with the admission on her part that the said Commonwealth of Virginia should only be liable for two-thirds of said debt, which was again declined by the said State of West Virginia.

XII.

This respondent further answering the said bill, says that the efforts looking to a settlement, and the only efforts looking to a settlement, are those hereinbefore stated in paragraph XI in this answer; the said commonwealth of Virginia having declined in 1871 to appoint any commissioners empowered and authorized to adjust or confer with the commissioners appointed by the State of West Virginia to adjust and determine what was the proportion of the public debt of said commonwealth to be assumed by this respondent. But, on the contrary, the said State of Virginia in 1871, assumed the right herself to settle the said public debt, created prior to January 1, 1861, with her creditors and for that purpose, without advising or consulting with West Virginia, passed an act, approved March 30, 1871, whereby she repudiated the ordinance of the Wheeling convention and adopted a method of her own as a basis of settlement and set apart as her own just proportion of said public debt two-thirds thereof, providing for its adjustment and funding as in the said act is set forth; a copy of which is filed with said bill as exhibit No. 1.

XIII.

This respondent further answering said bill, says that any burden that the commonwealth of Virginia assumed with reference to the payment of said debts; was made upon the assumption that she owed only two-thirds thereof and which she thereby admitted was not more than her just proportion; and therefore whatever she has paid on account thereof is a matter that cannot affect any controversy involved in this suit and is a matter of which the commonwealth of Virginia cannot complain. It is true, as alleged in said bill, that the great mass of creditors of the commonwealth of Virginia have agreed to accept the certificates issued under the acts of 1871, 1879, 1882 and 1892, for the one-third of her public debt, created prior to January 1, 1861, and have likewise agreed to accept the adjudication of this court what ever it may be, in full discharge of all their claims against Virginia on account of the old bonds and their claims represented by said certificates, thus relieving said commonwealth from any further liability as to said one-third of the public debt, or any part thereof, and this was the effect which the commonwealth of Virginia and the creditors intended and understood that the act of March 30, 1871, should have as to all the certificates issued under that act.

XIV.

This respondent for further answer to said bill, and especially that part contained in paragraph XIV, says that the old bonds were all required by the acts of the Legislature to be surrendered by the holders thereof to the State of Virginia and canceled, and they were all surrendered and canceled and new bonds were issued in lieu thereof for two-thirds of the said debt, not including interest, and certificates were issued for the other one-third; and it was declared by Virginia in the acts authorizing the issues and in the certificates that they were to be paid by West Virginia; and respondent avers that the said commonwealth of Virginia now holds said certificates in trust only for the owners thereof.

This respondent denies that Virginia used any means for an amicable settlement of said debt with West Virginia, or made any overtures to that end which were repeatedly refused, as alleged in said bill, except as hereinbefore stated in paragraph XI of this answer.

XV.

This respondent, for further answer to said bill, avers that even if all the bonds and obligations and other evidences of indebtedness of the original State of Virginia outstanding or contracted before January 1, 1861, as stated in paragraph I of said bill, except a comparatively insignificant sum, not amounting to one percentum of this liability, have been taken up and are now actually held by the commonwealth of Virginia, this fact does not give to the plaintiff the right to call upon West Virginia for settlement with respect thereto, because this respondent avers that the said bonds and obligations and other evidences of public indebtedness of the commonwealth of Virginia, contracted prior to January, 1861, have been taken up by the issuance of other bonds in lieu of two-thirds thereof as before stated, and by the issuance of the certificates hereinbefore mentioned for the other one-third thereof, the said one-third to be paid by West Virginia, according to the plan of funding the said debt by said commonwealth of Virginia, and that all the said original bonds and obligations and other evidences of said indebtedness are without any force, effect or value and have been canceled and annulled as aforesaid. Respondent avers that whatever has been paid upon said old indebtedness, by Virginia, if anything, was paid only on account of her own separate and equitable proportion thereof as recognized and declared by herself; and this respondent denies that the commonwealth of Virginia has any claim either in law or equity for any accounting with reference to said bonds or certificates or other evidences of indebtedness mentioned in paragraph XV of said

bill or any part thereof. Respondent avers that the plaintiff does not allege or admit in said bill, nor does it appear thereby, that she is liable on account of the other one-third or for any part thereof, which is represented, as before alleged, by said certificates.

XVI.

For further answer to said bill respondent avers that if any sum has been paid by Virginia, even though amounting in the aggregate to $25,000,000, including principal and interest to date, calculated at the rate of 6 per centum per annum, it was paid by her on account of her admitted just and equitable proportion of said public debt created prior to January 1, 1861; and if she has any claim at all against West Virginia on account of said alleged payment, which is not admitted, but is denied, it can only be for such amount as may be ascertained upon the basis and according to the principles embodied in section 9 of the ordinance of the Virginia convention, as hereinbefore stated. So this respondent denies that she is liable for any part of the obligations mentioned in paragraph XV and paragraph XVI of the plaintiff's bill, alleged to have been taken up and paid on account of said public debt, and denies that the said commonwealth of Virginia has, in her own right, a "just claim" against West Virginia for contribution on account thereof.

Respondent, for further answer to said paragraph XVI of said bill, avers that all accounts, vouchers and other records relating to the said public debt of Virginia, showing the payments made thereon, if any, and all other facts connected therewith, are now and always have been in the exclusive possession and control of the plaintiff, and respondent has no knowledge or information concerning the alleged payment of $25,000,000, or any other sum, on account of said debt existing prior to January 1, 1861, and therefore denies that plaintiff has paid said sum of $25,000,000 or any part thereof, and demands strict proof.

XVII.

This respondent, for answer to paragraph XVII of said bill, avers that the matters therein contained do not relate to the public debt of Virginia within the meaning and contemplation of section 9 of the Virginia ordinance of August 20, 1861, and cannot be brought into this suit for adjudication and determination. This respondent denies any and all liability for or on account of the matters referred to in said paragraph and avers that the said allegations are so uncertain, general and indefinite that respondent cannot answer them specifically and that no claim against this respondent can be founded upon them in this action.

XVIII.

This respondent, for further answer to said bill, says that she denies that the alleged liability of the State of West Virginia for a just and equitable proportion of the public debt of the commonwealth of Virginia rests upon any of the grounds specified in paragraph XVIII of said bill except the second, upon which, as hereinbefore averred in this answer, the State of West Virginia has always been ready and willing, and is now ready and willing, to adjust her liability, and upon which she proposed adjustment from 1866 to 1873, at which time Virginia had clearly evinced by her legislative action with reference to her public debt, her intention not to observe or abide by section 9 of the ordinance adopted by the Wheeling convention, and actually repudiated the agreed method upon which a settlement between the States should be made.

XIX.

This respondent, for further answer to said bill, avers that the only acts of Virginia indicating a desire to treat with West Virginia with reference to said public debt was that in which she tendered a proposition to arbitrate the same, thereby proposing to ignore the mode of settlement provided in said ordinance, and the two subsequent ones whereby she declared the only conditions upon which she would negotiate with the said State of West Virginia was that West Virginia should admit that the said Commonwealth of Virginia was only liable for two-thirds of the said public debt; and this respondent avers that if it is intended by paragraph XIX of said bill to aver that plaintiff ever attempted an amicable negotiation with West Virginia, except the ones hereinbefore stated, then this respondent denies the allegations contained in said paragraph of the bill and calls for proof thereof.

XX.

This respondent, for further answer to said bill, avers that what has already been stated in paragraph XIX of this answer is also applicable to paragraph XX of said bill and is hereby adopted as part hereof; and respondent avers in addition thereto that the alleged attempts of said commission to negotiate with West Virginia with reference to the said public debt related solely to the certificates owned by third parties and held in trust by said commission and the state of Virginia, which certificates represented about all, or practically all, of the one-third of the public debt not including interest of that State created prior to January 1, 1861; and these efforts on the part of said commission to negotiate

were upon the expressed condition that this respondent should concede that the Commonwealth of Virginia was, and is, liable for two thirds of the said public debt, and no more, which proffered negotiations were declined by the State of West Virginia because the finance committee of one branch of her legislative body had ascertained and reported that there was no liability upon her part to the Commonwealth of Virginia on account of the said public debt under the ordinance of the Wheeling Convention, and this respondent now denies that she owes or will owe any sum whatever to the State of Virginia upon a settlement made in the mode provided in said ordinance.

For further answer respondent says that the ordinance adopted by the Wheeling Convention in August, 1861, provided for the formation of the new State out of a part of the territory of the Commonwealth of Virginia, defined in the manner in which the respondent's equitable proportion of the public debt of Virginia should be ascertained, as appears from section nine of the said ordinance, which is set out in paragraph VI of the plaintiff's bill, and is heretofore referred to and made part of this answer.

And the said Commonwealth of Virginia also provided by section 10 of said ordinance as follows:

> "When the General Assembly shall give its consent to the formation of such new state, it shall forward to the Congress of the United States such consent, together with an official copy of such Constitution, with the request that the said new state may be admitted into the Union of States."

And respondent avers that the General Assembly referred to in section ten was the General Assembly of the Commonwealth of Virginia and the constitution referred to in said section was the constitution to be thereafter adopted by the proposed new state.

The said ordinance as heretofore stated also provided for the holding of a convention by the citizens within the territory of the proposed new state for the purpose of framing a constitution. After the promulgation of the ordinance of the convention, the people of Virginia, as well as those residing in that part of the territory to be converted into a new state as those residing in the other part of the Commonwealth of Virginia, which constitutes the present territory of that State, were fully advised as to the provisions of the said ordinance defining the manner in which the equitable proportion of the said debt was to be ascertained, and when the Constitution of West Virginia was framed and adopted in the year 1861 the said section nine was in full force, and both the Com-

monwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new state was to be formed were satisfied with the methods therein provided for ascertaining this respondent's equitable proportion of the said public debt, and the constitution was framed and adopted, and West Virginia's equitable proportion of said public debt was assumed on the basis of the said ordinance, and not otherwise. It was provided in section eight, Article VIII, of the Constitution of the State of West Virginia:

> "An equitable portion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

After the adoption of this Constitution the Commonwealth of Virginia, on May 13, 1862, as hereinbefore stated, by an act of her Legislature, gave her consent to the formation of the new state. "According to the boundaries and under the provisions set forth in the Constitution for the said state of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th day of November, 1861."

Subsequently, by an act of Congress approved December 31, 1862, provision was made for the admission of West Virginia into the Union, the said act providing a change in the seventh section of the eleventh article of the constitution of the said new state, relating to slavery, and providing for a vote to be taken relative thereto, and the proclamation thereof by the President of the United States, under which West Virginia, on the 20th day of June, 1863, became one of the states of the Union.

And so this respondent is advised, and now avers, that when West Virginia framed her constitution and inserted in it the provision concerning the adjustment of the public debt of Virginia and the Commonwealth of Virginia, through her Legislature, by the act aforesaid, approved the constitution of West Virginia as the basis of her consent for the formation of that State and her admission into the Union, and upon the passage of the act Congress admitting the said state into the Union, a compact between the two states prescribing the manner in which this respondent's equitable proportion of the debt should be ascertained was concluded and it became, and is binding upon the Commonwealth of Virginia and the State of West Virginia.

The respondent avers that her equitable proportion of said debt cannot be otherwise ascertained or determined than by the action of the State of West Virginia through her Legislature, as provided by her constitution, nor can its liquidation be otherwise provided for than by a sinking fund of sufficient amount to pay the accrued interest and redeem the principal of whatever sum may be thus ascertained within the period of thirty-four years as likewise therein provided. Respondent therefore pleads and relies upon said compact in bar of the plaintiff's right to prosecute and maintain this suit in this Honorable Court and prays that the said bill may be dismissed.

XXII.

This respondent further answering and as a defense to said bill avers that the Commonwealth of Virginia, by her said bill and exhibits therewith filed and made part thereof, shows that she has adjusted before the institution of this suit to the entire satisfaction of her people and her creditors her alleged equitable proportion of her whole public debt existing on the first day of January, 1861, which she claims is only two-thirds thereof, and that therefore this respondent should be made liable for the other one-third thereof. In effecting this adjustment she refunded all the evidences of indebtedness created prior to January 1, 1861, except about one per centum thereof, and required the same to be surrendered to her and cancelled and annulled. Respondent avers that the said Commonwealth of Virginia did not refund two-thirds of her public debt, as alleged, in said bill although she proposed to do this by an act of her Assembly approved March 30, 1871; but finding that she could probably secure more favorable terms of settlement of what she decided to be her just portion, another act was passed by her General Assembly which was approved March 28, 1879, whereby the debt was divided into two classes as shown by said act, and thereby made a further reduction in the principal of her indebtedness, as well as securing a lower rate of interest to be paid thereon.

After various efforts to adjust the indebtedness on terms most favorable to herself, she secured a settlement whereby she funded and settled what she claimed to be her equitable proportion of her debt at a fraction less than forty-seven per cent upon the entire amount, including interest, a part of which she may have paid, but for the great volume of which she has issued her bonds, and which are now outstanding and unpaid. For one-third of her original indebtedness, created prior to January 1, 1861, she has issued certificates amounting in the aggregate to $18,227,153.60, of which

it is alleged her Commissioners of The Sinking Fund and the Literary Fund hold $2,745,462.60, leaving $15,281,970 in the hands of the public.

Said certificates were issued by the State of Virginia and accepted by her creditors under the following acts of the General Assembly of that State, to-wit:

Under the act of March 30, 1871, certificates were issued for the sum of $15,281,970, of which it is alleged the Commissioners of the Sinking Fund and the Literary Fund held $2,578,515, leaving $12,703,451 in the hands of the public. Of these certificates issued to the public $10,851,294 had been deposited with the Virginia Commission on the fourth day of January, 1906, and only $1,852,157 had not been deposited at that time.

Under the act of March 28, 1879, certificates were issued to the amount of $564,258, of which $463,892 had been deposited with said commission at the date aforesaid, leaving $100,366 which had not been deposited. Neither the Commissioners of the Sinking Fund nor the Literary Fund held any of these certificates. The act of the Legislature under which all these certificates were issued and accepted by the creditors expressly provided that they should be taken "as a full and absolute release of the State of Virginia from all liability on account of said certificates."

Under the act of February 14, 1882, certificates were issued to the amount of $1,775,603, of which $166,943 were issued to the Virginia Literary Fund and $1,608,660 were issued to the public. Of the amount issued to the public $1,313,792 had been deposited with the Virginia Commission on the date aforesaid, leaving outstanding at that time $294,868.

Under the act of February 20, 1892, certificates were issued to the amount of $605,320, of which $544,456 had been deposited on the date aforesaid, leaving $60,844 still in the hands of the old bond-holders or their successors in interest. Neither the Commissioners of the Sinking Fund nor the Literary Fund received any of the certificates issued under said act.

The certificates for $1,774,603 issued under the act of 1882 and the $605,320 issued under the act of 1892 were in the following form, and respondent avers that the State of Virginia has been wholly released from liability thereon.

No..... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond ..... dollars, dated ..... day of ....., from ....., to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this commonwealth.

Done at the Capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.

..... Second Auditor.

..... Treasurer.

And respondent says that the amount of certificates of all classes deposited with the Virginia Commission on the date aforesaid was $13,173,435.41, but respondent does not know what amount, if any, has been deposited since that time, and respondent asks that the State of Virginia be required to show on the hearing of this cause, what amount of certificates have been so deposited since January 4, 1906, and under what acts of the Legislature the same were issued. Respondents avers that all said deposits were made under and in accordance with the agreement made between the Virginia Commission and the Depositing Committee for the certificate holders on the 24th day of November, 1895, which, among other things provides as follows:

> "And the said depositing committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia."

And so respondent avers that the Commonwealth of Virginia has been wholly released from all liability on account of the said certificates and every part of them and has no legal or equitable interest in any claim based thereon, and that this suit was instituted and is being prosecuted by the said Commonwealth of Virginia solely as trustee for and on behalf of the holders of said certificates and not in her own right; and that she has agreed through her said commission with the said creditors that she is to incur no expense on account of this action and that the whole expense thereof is to be borne by the holders of said certificates in whose behalf and for

whose exclusive benefit the same was instituted and is now being prosecuted.

XXIII.

This respondent for further answer to said bill says that all the matters and allegations therein contained and not admitted in this answer to be true or heretofore specifically denied, are now and hereby denied and strict proof thereof is required.

Wherefore, this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of plaintiff, material to be answered, according to her best knowledge and belief and humbly prays this Honorable Court that the said plaintiff's bill be dismissed and that this defendant have and recover her reasonable costs.

And as in duty bound she will ever pray, etc.

CLARKE W. MAY,
Attorney General.
J. G. CARLISLE,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
For West Virginia.

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, SS:

This day there personally appeared before me, the undersigned authority in and for said County and State, William M. O. Dawson, Governor of the State of West Virginia, the defendant named in the foregoing cause, and being by me duly sworn, says that he is the Governor of the defendant, the said State of West Virginia, and that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

WM. M. O. DAWSON,
Governor of West Virginia.

Sworn to and subscribed before me this 5th day of October, A. D., 1907.

W. B. MATHEWS,
Clerk Supreme Court of Appeals.

EXHIBITS WITH ANSWER.

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

EXHIBIT NUMBER 1.

An Act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862.

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Mason, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

4. This act shall be in force from and after its passage.

EXHIBIT NUMBER 2.

SECOND AUDITOR'S OFFICE,
RICHMOND, Nov. 16, 1871.

A. W. Campbell Esq., Secretary, &c.:

DEAR SIR:—Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,
Most respectfully yours,
ASA ROGERS.

EXHIBIT NUMBER 3.

REPORT OF THE SENATE FINANCE COMMITTEE OF 1873.

STATE OF WEST VIRGINIA,
CHARLESTON, December 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequences to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions

by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," [Virginia] passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to the first day of January*, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and to provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions which are the results of a mathematical demonstration, founded upon public official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued nevertheless the expenditures would seem to import an obligation

upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our state is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts by conditions precedent prescribed by Virginia under the restored government which government has been approved as aforesaid by Congress, by the Executive and by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been

called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which a State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM,
A. E. SUMMERS,
J. T. MCCLASKEY,
R. B. SHERRARD,
ELLIOTT VAWTER.

Supreme Court of the United States

OCTOBER TERM, 1907

[May 4, 1908.]

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

DECREE REFERING THE CAUSE TO A SPECIAL MASTER.

[DECREE ENTERED MAY 4TH, 1908, REFERRING CAUSE TO MASTER.]

Supreme Court of the United States.

No. 4, Original.—OCTOBER TERM, 1907.

Commonwealth of Virginia, Complainant,
vs.
State of West Virginia, Defendant.

[MAY 4, 1908.]

This cause having been heard upon the pleadings and accompanying exhibits, it is, on consideration, ordered that it be referred to a special master, to be hereinafter designated, to ascertain and report to the court:

1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.

2. The extent and *value of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately.

3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.

4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.

*See Amendment, page 207

6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof.

The answers to these inquiries to be without prejudice to any question in the cause.

It is further ordered that the Commonwealth of Virginia and the State of West Virginia shall each, when required, produce before the master, upon oath, all such records, books, papers and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts, or any of them.

And the master is authorized to make, or cause to be made, such examination as he may deem desirable of the books of account, vouchers, documents and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered, subject to the approval of the Chief Justice, to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference.

and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of five thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal shall receive such commission for his services in receiving and disbursing the funds so deposited with him as may be allowed by the court, and he will make a report of his transactions, receipts and disbursements in the premises.

Any notices to be given in connection with the execution of this decree may be given by and to the Attorneys General of the respective States.

The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the court.

And the court reserves the consideration of the allowance of interest; of the costs of this suit, and all further directions until after the master has made his report; either of the parties to be at liberty to apply to the court as they shall be advised.

SUPREME COURT OF THE UNITED STATES.

I, JAMES H. MCKENNEY, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing is a true copy of the order of said Supreme Court entered on the 4th day of May, A. D. 1908, in the case of *Commonwealth of Virginia, Complainant*, v. *State of West Virginia*, No. 4, Original, October Term, 1907, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this.....day of May, A. D. 1908.

.....

Clerk of the Supreme Court of the United States.

Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

against

WEST VIRGINIA, DEFENDANT.

MOTION TO MODIFY DECREE OF REFERENCE.

Attorney General.

J. G. CARLISLE.
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN.
GEO. W. MCCLINTIC.
W. G. MATHEWS,
Of Counsel for Defendant.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY.—ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, *Complainant.*
against
WEST VIRGINIA, *Defendant.*

MOTION TO MODIFY DECREE OF REFERENCE.

To the Honorable the Supreme Court of the United States:

Now comes the State of West Virginia, the defendant herein, and availing itself of the leave granted by the interlocutory decree heretofore entered in this cause, respectfully moves the court to modify the said decree to the end that the same may be more definite and certain in the particulars hereinafter set forth:

First. By amending paragraph two to read as follows:

> "The territorial area and assessed valuation of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately stated, including in the latter State the counties of Berkeley and Jefferson."

Second. By adding at the end of paragraph three thereof the words:

> "Prior to January 1, 1861."

Third. By amending paragraph four so as to read as follows:

> "The ordinary expenses of the government of Virginia since any of said debt was contracted and prior to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

Fourth. By amending paragraph five by striking out the words "fair estimated" where they occur in the first line, and inserting in lieu thereof the word "assessed" and by adding at the end thereof the words "during the same period," so that the same will read:

> "5. And also on the basis of the assessed valuation of the property, real and personal, by counties, of the State of Virginia during the same period."

Fifth. By amending paragraph six by inserting before the word "period" in the second line thereof the word "said" and before the word "prior" in the third line thereof the word "and," and by striking out the words "the admission of the latter State into the Union" and inserting in lieu thereof the words "January 1, 1861," so that it will read:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

CLARKE W. MAY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

[Endorsed:] Supreme Court of the United States. October term, 1907. In equity. Original No. 4. Commonwealth of Virginia, complainant, against West Virginia, defendant. Motion to modify interlocutory decree referring cause to master.

Supreme Court of the United States

OCTOBER TERM, 1907.

Original, No. 7.

VIRGINIA

vs.

WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN.
FILED AS AN EXHIBIT FOR THE COMPLAINANT.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA.
vs.
STATE OF WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN.

Filed as an Exhibit for the Complainant.

The fact that Virginia in 1811-12 called upon Chief Justice Marshall and others of her leading citizens to devote some weeks or months of their time to a reconnaissance of the region lying between the Blue Ridge Mountains and the Ohio, for the purpose of learning the most desirable line of communication between the waters of the Eastern Seaboard and the Western waters, and that the Great Chief Justice and the eminent men who served with him on that Commission responded to that call and devoted themselves to the arduous service which its acceptance involved, is evidence of the profound interest which in the early part of the last century the people of Virginia and her leading citizens took in that subject, and the importance which they attached to it.

The report of this historic Commission is therefore reprinted and filed as an exhibit for the complainant in this cause.

Col. Claudius Crozet, an eminent civil engineer, who, after having served as an engineer under Napoleon, and afterwards as Professor of Mathematics or Engineering in the U. S. Military Academy at West Point, was for a number of years State Engineer of Virginia, and some of the most important of her works of internal improvement were begun under his direction.

In one of his reports he refers to the service rendered by this Commission in the following language:

> "The first notice of the connection of the eastern and western waters is found in a report, made at the close of 1812, by the commissioners appointed by an act of the preceding

session, 'for the purpose of viewing certain rivers within this Commonwealth.' The commissioners, John Marshall, James Breckenridge, William Lewis, James M'Dowell, William Caruthers, Andrew Alexander, examined the James river, from Lynchburg up, crossed the mountains, and descended with much difficulty, and indeed personal danger, the hitherto unexplored New river. They went through this arduous task with a zeal and perseverance worthy of such men.

"A plain sluice improvement of the James and Jackson's river, up to Dunlap's creek; thence a turnpike road, across the Alleghany mountain, which has been made since, and finally a sluice navigation of the Greenbrier, New, and Kanawha rivers were, at that early day, all they thought proper to recommend.

"A remarkable, and in our day, curious passage, occurs in their report. 'Your commissioners submit with diffidence the following propositions: First, that boats impelled by steam may be employed successfully on New River * * *. But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified as to be applied in new and different situations, &c.' These remarks, at the very dawn of steam navigation, show, on their part, much sagacity and forethought."

See Report of Colonel Claudius Crozet, late State Engineer, to the General Assembly of Virginia, 1848.

WILLIAM A. ANDERSON,
Counsel for Virginia.

March, 1908.

Besides the Great Chief Justice, the gentlemen who served upon this Commission were James Breckenridge, distinguished as a soldier and statesman, and esteemed by contemporaries as the equal in ability, though not in oratory, of his brother, John Breckenridge, of Kentucky; William Lewis, a patriotic citizen of the highest character, a near relative of Col. Charles, and General Andrew Lewis, of Point Pleasant fame, and a worthy scion of such illustrious lineage; James M'Dowell, one of the gifted men of his generation, who afterwards rendered eminent service as a member of Congress, and as Governor of the Commonwealth; William Caruthers, a leading citizen of the Valley of Virginia, and a farmer and business man of very high character and standing; and Andrew Alexander, surveyor, engineer, representative citizen, a man of skill in his profession, and remarkable for his public spirit.

REPORT

OF THE

COMMISSIONERS

APPOINTED TO VIEW CERTAIN RIVERS

WITHIN THE

COMMONWEALTH OF VIRGINIA,

CONFORMABLE TO AN ACT OF SAID COMMONWEALTH, PASSED THE FOURTEENTH DAY OF FEBRUARY, 1811

PRINTED ACCORDING TO A JOINT RESOLUTION OF BOTH HOUSES OF THE GENERAL ASSEMBLY.

AND

ACCOMPANIED BY A MAP,

EXECUTED UNDER THE DIRECTION OF THE EXECUTIVE

IN CONFORMITY WITH THAT RESOLUTION.

PRINTED...1816.

STATE OF VIRGINIA.

Inland Navigation and Improvements.

PREAMBLE AND RESOLUTION.

For Re-printing the Report of the Commissioners on the Navigation of the Great Kanawha, &c.

[*Agreed to by both Houses of Assembly, February 14, 1814.*]

Whereas, it would greatly promote the welfare of this Commonwealth, and the prosperity of our sister States, to form a more intimate connexion between the Eastern and Western Waters of the United States; and, with a view to that object, the General Assembly of Virginia at a former session, appointed Commissioners to survey the head waters of James-River and the Great Kanawha, with instructions to ascertain the practicability of extending their navigation to the base of the chain of mountains which divides them, and at the shortest and easiest portage across it; a trust which was accepted and fulfilled, by the Commissioners who acted therein, in a manner that entitles them to the thanks of their country: And, as the result of their labors has never been presented to the Legislature of the Union, nor to the governments of the several States, who cannot but feel an interest in the accomplishment of an enterprise so important to the arts, manufactures, and commerce of the United States—

Resolved, therefore, That the executive of this commonwealth be, and they are hereby empowered and requested, to cause the Report of the Commissioners to be re-printed, and the Map and References accompanying it to be reduced to a convenient scale, engraved, printed, and annexed to the Report; and, reserving two hundred and fifty copies thereof for the use of the General Assembly, to forward a copy to each of the Commissioners whose names are subscribed to the Report, to each Member of the Congress of the United States, and to the Executives of the several States and Territories.

PROCEEDINGS OF THE COMMISSIONERS.

Letter of Mr. Marshall, One of the Commissioners.

A communication from the Governor, enclosing a letter from the Honorable John Marshall, and a report from the Commissioners who

executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth," was laid before the house.

The said letter and Report were read as follows:

Richmond, December 26, 1812.

SIR:—I hasten to submit to your Excellency, for the purpose of being laid before the General Assembly, the Report of the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth."

To their distance from each other, and the consequent difficulties attending the interchange of sentiment, and the attainment of their respective signatures, is to be ascribed the delay which has taken place in the performance of this part of their duty.

The more detailed report, to which the enclosed refers, is not yet received, but it is expected in a few days, and will then be transmitted to your Excellency. It was not thought advisable longer to withhold the general report, for the purpose of accompanying it with that more in detail, to which it refers.

I have the honor to be,
Sir, with great respect,
Your obedient servant,
J. MARSHALL.

His Excellency Governor BARBOUR.

INLAND NAVIGATION.

REPORT.

To the Honorable the Speaker and Members of the General Assembly, the undersigned Commissioners, named, with others, in the act entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth,"

RESPECTFULLY REPORT—

That, supposing the autumn to be the season which afforded the fairest prospects for giving effect to the views of the Legislature, as expressed in their act, your Commissioners agreed that a meeting should be called on the first of September, at Lynchburg. The number required by law, for the execution of the service they were directed to perform, having assembled, and the necessary prepara-

tions having been made, your Commissioners began at the Bridge at Lynchburg, to view James-river, and to take its level by sections to the mouth of Dunlops-creek. Mr. Andrew Alexander, the surveyor of Rockbridge county, had been engaged to execute this duty under their direction. To his report, which your Commissioners believe to be accurate, they beg leave to refer, as exhibiting, in minute detail, the information required by the law.

As an actual measurement of the whole river would have employed so much time as to defer the completion of the work, until high waters might defeat the object of the Legislature, and was rendered the less necessary by previous surveys: distances were in general conjectured. The eye, aided by a time-piece, and occasionally corrected by actual measurement, furnished information, which, though not perfectly exact, was believed not to vary much from the truth, and to be substantially sufficient. Those places which present serious obstacles were measured by the chain, and the elevation was taken throughout by a spirit level.

On that part of the river which is comprised within the charter already granted, your Commissioners presumed that little, if any, information is expected from them, other than will be found in the annexed report of Mr. Alexander.

From Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, no difficulty presents itself, which may not be with certainty surmounted. The falls are no where formidable; there are long stretches of smooth water, and the shallows may be so deepened as to afford water for boats bringing down from six to eight tons, and carrying up from four to six tons, if not throughout the year, through all but a very inconsiderable portion of it. Your Commissioners give the opinion, unanimously, and with great confidence, that the navigation from Crow's Ferry to the mouth of the Cow-Pasture, may, with improvements by no means expensive, be rendered as certain, as useful, and as permanent, as the navigation from the same place to Lynchburg; and that it may be used at all times when the navigation to Lynchburg can be used, with boats carrying an equal burthen—indeed, that it may be rendered more safe and less laborious, than that from the mouth of the North Fork to Lynchburg now is.

From the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, the difficulties become more considerable and their removal will require greater expenditures of money. The mass of water diminishes, and the elevation increases.—The shoals become longer and shallower, and the intervals of smooth water shorter. Yet, this rugged navigation, though totally unimproved, is now used during high water. Boats, laden with the produce of the country, pass every year from the mouth of Dunlop's-creek to Richmond. It is, therefore, proved to be, even at this time, practicable for some portion of the year. This portion varies with the seasons. Most com-

monly, it commences in November, and terminates late in May, or early in June.

That, by the removal of rocks, now lying promiscuously and irregularly through the bed of the river, which it will be necessary in only a few instances to blow, and by the judicious application of labor, to the collection of water in narrower spaces than it now covers, this navigation may be rendered much more secure and beneficial, and the time during which it can be used may be considerably extended, will not admit of doubt.—Whether this portion of the river may be rendered at all times boatable, depends on the depth of water to be collected in particular channels by such means as are applicable to the object.

Some of your Commissioners have been personally engaged in opening the navigation of the North Fork of James-river, through Rockbridge. They are decidedly of opinion, that the river denominated "Jackson's," contains as far as Dunlop's-creek, more water and less formidable obstructions than were found in the North Fork. Yet the North Fork, though its improvement is far from being complete, is now actually used to great advantage, and is not much inferior to the river below.—Some experienced and judicious boatmen who were employed on the expedition, who are well acquainted with the river and its navigation, unite in the declaration, that, if the means be taken which ought to be employed, that part of James-river which is between the Cow-Pasture and Dunlop's-creek, may be used by any boats which will be capable of continuing their voyage to Lynchburg.

Your Commissioners concur in this opinion; and they take occasion now to remark, that should it be deemed advisable still to adhere to the system of improvement heretofore used in the upper part of the river, the difficulties of this navigation would, they think, be much diminished by several facilities which might be given to it. They would particularly suggest chains, with buoys fastened in rocks or otherwise, or walls on which men may walk, of which boatmen might avail themselves to lessen the labor of ascending places of peculiar difficulty; and thus either to increase the load which may be carried up the river, or to diminish the number of persons necessary for carrying up a given load. They will also mention a fact deemed favorable to the object contemplated by the Legislature. It is this: although the cold may be more intense in the bosom of the mountains than below, this part of the river freezes over.

It will perhaps save the honorable the members of the Legislature some calculation, to observe, that the distance from Lynchburg to the commencement of the Blue Ridge is stated, in the report of Mr. Alexander, to be twenty-five miles one-fourth and thirty poles: the elevation to be one hundred and eleven feet eight inches; shewing an average elevation of four and an half

feet to the mile.—The distance through the mountain, that is from Racoon Island to the mouth of the North Fork, is eight miles one-fourth and forty-nine poles, and the elevation one hundred and one feet six inches, giving an average elevation of upwards of twelve feet to the mile. The distance from the mouth of the North Fork to Crows Ferry, or Beall's Bridge, the highest point to which navigation is to be carried by the James-River Company, is stated at twenty-six miles and thirty-eight poles, and the elevation is one hundred and thirty-one feet four inches; making the average elevation five feet to a mile.

The distance from Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, is stated at thirty-six miles fifty-nine poles, and the elevation is one hundred and ninety feet three inches, making the average elevation five and an half feet nearly to a mile. The distance from the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, is stated at twenty-three miles three-fourths and twenty poles, and the elevation is two hundred and twenty-eight feet three inches, making the average elevation nine and an half feet to the mile.

Having reached Dunlop's-creek, your Commissioners proceeded to view and mark out what appeared to them to be the best and most direct way for a turnpike road from the mouth of that creek to the most convenient navigable point on Greenbrier river.

With some inconsiderable deviations, which will appear in the report of Mr. Alexander, already referred to, and some others which will be suggested, the road now leading from the mouth of Dunlop's-creek, by Bowyer's Sulphur Spring, to Anderson's Ford, over Greenbrier, at the mouth of Howard's-creek, is believed to be the most eligible which can be made. To that part of the road which passes from the mouth of Dunlop's-creek to the old Iron Works, a distance of about five miles, there are considerable objections, which your Commissioners are inclined to believe may be diminished. The road crosses the creek eight times, and the ground, during the winter and spring would, if much used and not well covered with stone or gravel, be much cut and be very deep. The creek too is frequently so high as not to be fordable.

Should it be found practicable, which your Commissioners believe to be the fact, to render Dunlop's-creek navigable up to its falls, some distance below the old Iron Works, these inconveniences would be in a great measure removed.

Should it be deemed unadvisable to carry navigation up Dunlop's-creek, a direction, as is understood from some of the inhabitants of that neighborhod, may be given to the road, so as to avoid five crossings of the creek, and at the same time shorten the distance. No attempt to view this way was made, because

guides could not readily be procured, and your Commissioners feared that, by devoting too much time to a minor object, on which complete information is attainable with ease and certainty through various channels, they might hazard the failure of others which were believed to be of much importance.

The road from the Sulphur Spring to Greenbrier crosses Howard's-creek, which is often not fordable, six times, and is in a few places attended with some difficulty. A small improvement may be made in it, and the steepest part avoided, by returning it, near the river, to the ground over which it formerly passed, and from which it has been lately taken.

The road over the mountain has been attentively viewed, and the deviations recommended, from that now in use, carefully and plainly marked. Your Commissioners feel much satisfaction in stating, that the elevation of this part of the road may, in the most unfavorable places, be reduced to an angle of five degrees with the horizon. By occasionally removing the earth, for small distances, this angle may be still further diminished. It is believed to be susceptible of improvement on as easy terms as any other road, since the materials for a turnpike are every where convenient, and not more levelling will be necessary than must be expected in passing through a mountainous country.

Your commissioners proceeded down the Greenbrier river in the boat in which they ascended the James. The season had been remarkably dry, and the water was declared by the inhabitants to be as low as at any period within their recollection. It frequently spreads over a wide bed covered with large stone, and is, in its present unimproved state, and at the season when it was viewed, so very shallow for the greater part of its course, as not to swim an empty boat. The labor of removing stone, and of dragging the boat over those which could not be removed without implements provided for the purpose, was so great, that your Commissioners at one time were enabled to advance only three miles in two days, even with the assistance of a horse and of many additional laborers. In part of the river the shoals are frequent and long, and the falls, as the report of Mr. Alexander will shew, considerable. At the great falls, which is the most important of them, the descent is twelve feet in forty-eight poles. There is no perpendicular fall at this place, but one continued rapid, with large rocks, irregularly interspersed through the bed of the river. Near the mouth of the river there is a flat rock, which continues for about two hundred and forty poles, with many irregular apertures or fissures through which the water passes. Although, in the usual state of the river, this rock is covered with water of sufficient depth for navigation; yet, such was the drought of the

last autumn, it was necessary to drag the boat over its whole extent.

These difficulties present obstacles to navigation during a season when the waters are remarkably low, which can be surmounted only at considerable expense.

But, from the best information your Commissioners can obtain, and they believe it to be correct, the Greenbrier is seldom so low at any season as it was during the last autumn; and it seldom if ever fails, for eight or nine months in the year, to be at least two feet higher than when viewed by your Commissioners; a depth of water unquestionably sufficient for the purpose of navigation. The testimony given by the inhabitants to this fact, was corroborated by appearances on the river. The indications of a recent considerable diminution of water were not to be mistaken.

On an attentive consideration of the obstacles which were found by your Commissioners to be great, while the river remains in the state in which they viewed it, they are unanimously and decidedly of opinion, that its navigation may be rendered as safe, as certain, and as easy as that of the James, at all times, except when the water is unusually low. The rocks are in general loose; and may be removed without extraordinary difficulty, so as to afford a tolerably smooth passage to boats; and, by collecting the water into narrow channels, a sufficient depth may be obtained, with the exception of a short period in a very dry year, to swim any boat which can be brought at the same time down James-river. But so scanty is the supply of water in a time of uncommon drought, that doubts are entertained whether there may not be a short season of the year during which, unless a considerable expense be incurred, the navigation must be suspended. Though aided by men and horses, ten days of unremitting labor were consumed in passing from the mouth of Howards-creek to the mouth of Greenbrier river, a distance not much exceeding forty-eight miles. In the month of June, the same voyage, if not retarded by measuring the river, might have been performed in a single day. Some of your Commissioners, however, are of opinion, that the Greenbrier may, without great additional expense, be rendered at all times passable for boats carrying half a load.

In addition to the shallowness of the water, (an inconvenience which is common to all rivers as you approach their sources, and which disappears for eight or nine months in the year) and to the rocks which have been mentioned, the obstructions to the navigation of the Greenbrier consists in its falls, and in the general rapidity of its current.

The great falls alone are of sufficient magnitude to merit particular attention. These unquestionably admit of being rendered

navigable, either by opening a sluice judiciously through them, or by locks. The latter would be most expensive, but would leave the navigation less laborious.

The rapidity of the current may be estimated by observing that the descent in forty-eight miles and eighty-four poles, is three hundred and sixty-two feet ten inches, between seven and eight feet to the mile.

This current will present no difficulty to a boat descending the river. To one ascending it, the labor will be considerable, but not so considerable as in some parts of James-river.

The night of the 28th of September, was passed among the islands in the mouth of Greenbrier; and on the morning of the 29th, your Commissioners entered New-river.

The New-river, or that part of the Great Kanawha which is above the mouth of Gauley, having to search its intricate way, and force a passage through a long chain of lofty and rugged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water.

The difficulties encountered in descending this river were of a character essentially different from those which were experienced in the Greenbrier. Uncommon as had been the drought, the supply of water was abundant. The boat sometimes, though rarely, rubbed upon a shoal; but in every such case it was apparent that a sufficient passage might be opened without much labor or expense. The velocity of the current and the enormous rocks which often interrupt it, the number and magnitude of the rapids and falls, the steepness, cragginess and abruptness of the banks, constitute the great impediments which at present exist to navigation between the mouth of the Greenbrier and the Great Falls of Kanawha.

The distance from the mouth of Greenbrier to Bowyer's Ferry, is forty miles one quarter and forty-six poles, and the descent is four hundred and sixty-six feet seven inches; that is, eleven feet six inches in each mile. In general, there is much sameness in the appearance of this part of the river. Long rapids, frequently terminated by a fall of from five to ten feet, in a distance of ten, twenty, thirty, and sometimes a greater number of poles; an intervening space, sometimes more, sometimes less considerable, of swift or smooth water; rocks, sometimes above the surface, sometimes near it, so as to require great caution to save a boat from dashing on them; a copious stream, with a current commonly impetuous, constitute its leading characteristics.

Falls too great to come within this general description, will be particularly noticed.

Brook's Falls are about four miles and one-fourth below the mouth of Greenbrier. The water descends thirteen feet seven inches in fifty poles. In its most rapid part the descent is five feet ten inches in fourteen poles. The boat was navigated through this place.

A much more formidable obstruction is the falls at Richmond's Mill. These are designated in the neighborhood by the name of the "Great Falls of New-river," but are generally called at a distance, "Lick-Creek Falls."

At this place the water may with propriety be said to fall perpendicularly twenty-three feet. For this distance, the sheet which dashes over the summit is intercepted only by huge fragments of broken rock, which, having been successively disjointed from the brink of the precipice, have fallen into the foaming basin below, where, piled on each other, they form one or two benches that break the cataract. A small distance lower down is another fall of three or four feet.

Here, for the first time, the boat was taken out of the water and let down by skids.

The ground along which a canal may be carried around these falls, pursuing the course of Richmond's mill-race, was measured, and the elevation taken. The descent was found to be twenty-two feet nine inches, in one hundred and eighty-one poles.

This estimate excludes a part of the falls, between five and six feet of which are just above the head of Richmond's mill-race.

The bottom of the river for some distance above these falls, is a hard rock, often appearing above the surface, and much covered with movable stones, some of which are very large. The bottom of the mill-race appears to be of the same description.

From Bowyer's Ferry to the Falls of the Great Kanawha, was estimated at nineteen miles and fifty-eight poles, in which distance the river falls three hundred and thirty-one feet; that is, seventeen feet to a mile. The honorable the legislature will perceive, that below the ferry the descent, in the same distance, is greater than above. For a part of this space, the scene is awful and discouraging. The vast volume of water which rolls down New-river, and which, far above the ferry, often spreads, without becoming shallow, over a bed three or four hundred yards wide; is seldom more than one hundred or one hundred and fifty yards wide. In some places, for a mile or more in continuation, it is compressed by the mountains on each side, into a channel of from twenty to sixty yards wide; and even these narrow limits are still more narrowed by enormous rocks which lie promiscuously in the bed of the river, through which it is often difficult to find a passage wide enough for the admission of a boat. In some places the bank is formed

of rugged and perpendicular cliffs or entire rock, which appear to be twenty, thirty, and forty feet high; in others, enormous, but unconnected, rocks dip into the water.

There are unequivocal indications of the river's having risen, in these narrows, from thirty to forty feet perpendicularly.

Immediately above the mouth of Gauley, the river opens and presents a beautiful sheet of deep smooth water, which is succeeded by the rocks over which it dashes, and forms the Great Falls of Kanawha. The height of these falls is twenty feet four inches. With its name, the river loses its wild and savage aspect. It is no longer confined by rugged cliff, by mountains barely separated from each other, nor interrupted by enormous masses of rocks which are scarcely to be avoided.

Within a short distance above the falls, the current is not unmanageably swift, nor the rocks over which it passes uneven. Below, quite to the rocks which have fallen from the brink over which the cataract rushes, is a deep smooth and beautiful basin. The river is so wide as to rise, in the greatest freshes, only six or seven feet. The falls themselves constitute the impediment, and the only impediment at this place.

Your Commissioners have deemed it proper to state in their full strength, the difficulties which are to be surmounted in opening the intercourse between this part of the state of Virginia and the western country; and to put the legislature, as far as is possible, in possession of the testimony on which their opinion is formed, as well as of their opinion. If, misguided by their conviction of the importance of the object, they are too sanguine in their hopes of its accomplishment, the facts now communicated will enable the General Assembly to correct the mistaken conclusions which have been drawn, and to determine on the course which will best promote the interests of the public.

The practicability of rendering the Greenbrier navigable has already been stated. The system which may be found best adapted for the improvement of James-river, will be equally applicable to the Greenbrier, and will be equally successful.—The one river and the other will be rendered more or less valuable as more or less labor and skill may be employed on them; but there can be no mistake in saying that, without incurring an expense which any would pronounce extravagant they are both capable of being brought into extensive use. Not only in descending, but in ascending also, these rivers may be navigated to great advantage.

With respect to New-river, a judgment cannot be formed quite so decisively, nor pronounced quite so confidently. The difficulties are great, and deserve to be seriously considered.

The boat which conveyed your Commissioners, passed from the mouth of Greenbrier, to the place where their expedition terminated, without being taken out of the water, except at the Great Falls of New-river, and at the Great Falls of the Kanawha. It was navigated in the usual way through all the other difficult places which abound in New-river, except two—both below Bowyers Ferry. Through these it was conducted by ropes.

The boat was not laden, nor was it empty. In addition to the number of hands usually employed in navigation, it carried between two and three thousand weight. The greater part of this burthen was taken out in the most difficult places; but in many of considerable magnitude, it remained in the boat. Where the vessel was guided by ropes, the necessity of resorting to this expedient was occasioned solely by the intervention of rocks, which can be removed.

It is also worthy of notice, that this voyage was performed by boatmen, who, having never before seen the river, were reduced to the necessity of selecting their way at the moment, without the aid of previous information.

The only impediments to the descent of the boat, except at the two great falls already mentioned, were rocks lying so near the surface of the water as to strike the bottom while shooting over them. At the usual height of the river, these rocks would be entirely covered, and all danger from them be removed; but others would be placed in a situation to expose a boat to equal hazard. It is therefore necessary, even for the descending navigation, to open a plain and broad sluice through all the rapids and falls, so as to relieve boats navigating the river from all danger of being dashed against the rocks. This may be effected by removing some and blowing others.—This sluice may be so conducted as to graduate the falls where they are most sudden, and thereby, in some degree, to diminish the impetuosity of the current.

Brook's Falls, the Great Falls of New-river, and the Great Falls of Kanawha, will probably require and admit of a different course.

The first of these which is the least formidable of the three, will present three alternatives to the election of those who may be engaged in improving the navigation.

First—One or more locks, which may unquestionably be constructed at this place.

Second—A canal, which is already almost formed, on the north side of the river. Its completion would require that it be opened for a short distance both where it would receive the water at the head of the falls and where it would empty itself below them.

To the eligibility of this canal, there can be but one objection. There may be impracticable rock, now hidden by the earth, so near the surface as to render this plan unadvisable.

Third—To open a sluice in the river, along its northern bank, and graduate the fall as far as may be compatible with that system of operation.

The Great Falls of New-river must be turned, by using a canal to be cut on the southern side, pursuing nearly the tract of Richmond's mill-race. Should locks be employed, it will most probably be found advisable to place them in this canal. Should locks be dispensed with, there will be no difficulty in descending through this channel, but the toil of ascending must, at this place, be considerable.

At the Great Falls of Kanawha, there is, near Morris's mill, a very eligible place for locks. If a canal be preferred, there is every reason to believe that the ground will admit of one, which may be so extended, and the fall thereby so graduated, as to afford a safe passage to loaded boats.

These observations are formed on the state of the river when viewed by your Commissioners.—It will readily occur, that they cannot judge with certainty of the changes which may be brought about by a great rise of water.

It would seem most probable, that by such rise the falls would be diminished, because the water at their feet would pass off less rapidly than at their head. But the apprehension cannot be entirely discarded, that in the narrows, which have been mentioned, the torrent would, in a flood, be too impetuous to be trusted. It is probable, that moderate elevation of the water would rather facilitate the passage of the boats; at least of those descending the river; but that great floods would suspend the navigation.

Having stated their view of this subject, your Commissioners will only add their opinion, that the New-river may be relied on with certainty, for the transportation of articles from east to west.

On the practicability of using this channel of conveyance for the transportation of articles from the western country, towards the rivers which empty into the Atlantic, at least so much of it as lies between Bowyer's Ferry and the Great Falls of Kanawha they must speak with less confidence. The great difficulty consists in the velocity of the current. For several miles, between Bowyer's Ferry and the Falls, it is believed that a canal would be impracticable. The river is susceptible of no other improvement than may be made in its channel, or on its banks. The current is often too rapid to be stemmed by a boat impelled by oars; and the water too deep to admit the use of poles. If a

channel, sufficient for the safe passage of vessels, be opened, still some other means than oars or poles must be devised for impelling them up the stream.

Your Commissioners submit with diffidence the following proposition:

First—That boats impelled by steam may be employed successfully on New-river.

With the capacities of this powerful agent they are too little acquainted to speak with confidence of the use which may be made of it in the waters of Virginia. Elsewhere, it has certainly been applied with great advantage to the purposes of navigation. Neither have they that intimate knowledge of the velocity of the currents, against which vessels have been propelled by it, to compare them with that of New-river, and to hazard any decided opinion on the comparison.—But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong: and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified in its modifications, as to be applied in new and different situations, as their exigencies may require. It is believed, that a sufficient depth of water is certainly obtainable, but whether sufficient employment may be found, to justify the use of a vessel which must, in any state of things, be constructed at considerable expense, is a question your Commissioners cannot attempt to solve.

Second—Should it be found impracticable to apply steam with advantage to the navigation of New-river, it is respectfully suggested, that between the Great Falls of Kanawha and Bowyer's Ferry, resort may be had to horse labor.

To give this facility to the navigation, it will be necessary to construct a horse-way along the bank of the river at different heights, or at the most common height of the water. The objection that such way cannot be used at all times, will lose much of force, when it shall be recollected that the navigation up the river will admit of being suspended for considerable intervals, with less injury to those who use it, than that which conveys to the western country articles imported for general consumption. The construction of this way, however, will require the blowing of a great quantity of rock, and will, consequently, be expensive.

Third—Should neither of these expedients be deemed eligible, it is respectfully suggested, that boats may be forced up the current, where it is too rapid for oars and too deep for poles, by the aid of chains fastened in the rocks on the bank.

Whatever doubts may be entertained respecting the navigation for boats ascending the river between the Great Falls of Kanawha and Bowyer's Ferry; your Commissioners are entirely persuaded

of the practicability of using it advantageously between the ferry and the mouth of Greenbrier.

In obedience to the law under which they have acted, your Commissioners will now proceed to state their ideas of the sums of money which will probably be necessary to open the river and make the road they have viewed.

No part of their duty has been performed with less confidence than this.

It will readily occur to the legislature, that no estimate of expense of executing so great a work as that which is to afford to the western parts of Virginia the means of conveying the produce of their lands to market, and probably to connect Virginia commercially with her sister states in the west, can have just pretensions to exactness.—Were the system of improvement, and the extent to which that system is to be carried, accurately defined; any calculations which could now be made, even by professional men, of the sum necessary for its execution, might be found to vary widely from that which would be actually expended. Still less precision can be looked for in the calculations of your Commissioners.

But it must be apparent that the expense of improvement will essentially depend on the object for which the improvement shall be made.

If the views of the legislature shall be limited to the conveyance of articles, the growth of the upper country, down James-river, the cheapness of that conveyance will certainly depend much on the degree of perfection to which the improvement may be carried; but the river, being the only channel of conveyance, will, if merely practicable, be used to some extent.

If the views of the legislature shall extend to a free commercial intercourse with the western states, or any of them, the channel selected for that intercourse will come into competition with others which now exist or may be opened, and must recommend itself to a preference by the advantages it offers. With a view to the latter object, no improvement ought to be undertaken but with a determination to make it complete and effectual.

The estimates of expense were more particularly made by Mr. Caruthers, who has been personally engaged in opening the North Fork though Rockbridge. This gentleman made his calculations on the plan which has been adopted by the James-River Company, with such improvements as would better adapt that plan to steam navigation. According to his estimate, one hundred and ninety thousand dollars will be sufficient to accomplish the work from Beall's Bridge, or Crow's Ferry, to the Falls of the Great Kanawha, including the road.—This estimate is formed on a comparison of the impediments to be removed, with those he had himself encountered in opening the North Fork of James-river. Some

others of your Commissioners, who have too little knowledge of the labor necessary for the accomplishment of objects of this description, to confide themselves, in their own judgment, much less to recommend it to the confidence of others, are so impressed with the magnitude of the difficulties they have seen, as to be unable to persuade themselves that the work can be completed for the sum at which it has been estimated. That estimate does not appear to them to be extravagant, if the descending navigation alone be contemplated. To make the ascending navigation such as will entitle it to extensive use, and give this a preference over other routes, they submit, though with much diffidence, the opinion that at least a half a million, perhaps six hundred thousand dollars, will be requisite.

From the mouth of Dunlop's-creek to the mouth of Howard's creek, is twenty-six miles and forty-four poles. From the first mentioned place to the summit of Alleghany mountain, is sixteen miles and thirty-six poles, and the elevation is nine hundred and forty-eight feet, which makes an angle with the horizon of less than three-quarters of a degree. From the summit of the mountain to the mouth of Howard's-creek, the distance is twelve miles and eight poles, and the descent is eight hundred and thirty-eight feet seven inches, making with the horizon an angle of about three-quarters of a degree. There are no peculiarities attending this route, which will render any plan the legislature may prefer for turnpiking it, more costly in its application to this road, than to others which have been constructed in various parts of the United States. It is now at least equal to, perhaps better, than any other of equal distance in the same part of the country.

In presenting to the honorable the legislature the advantages which, in the opinion of your Commissioners, will probably accrue to this state from executing the work to which their report relates, it will be necessary to divide this subject, and to consider, separately—first, those which may reasonably be expected to result from executing it in part: next, those which are to be looked for from executing it in the whole.

Should the navigation of James-river be carried up to the mouth of Dunlop's-creek, and a turnpike road be made over the Alleghany mountain, although nothing further should be done, a considerable impulse will be given to the agriculture, and a valuable effect produced on the wealth and population of a considerable tract of country. It cannot reasonably be doubted, that Bath, a part of Botetourt, and a great part of Greenbrier, Monroe, and perhaps even Giles, would find a real interest in searching for a market on James-river, for the produce of their soil, if such safe and cheap conveyance were afforded them as might be given by the improvements which have been stated.—Agriculture would

mingle more than heretofore with grazing; and industry would flourish when the reward of industry should be attainable. Those more western counties, whose distance might forbid the attempt to transport grain manufactured into flour, or distilled into spirits, to the markets on James-river, might still be encouraged to bring to those markets, salt, salted provisions, and various manufactures of hemp. An increase of population would result, not only from the check which this state of things would give to emigration, but also from its operation on the inhabitants, in other respects.

Other parts of the state would derive corresponding advantages from their intercourse with a section of the country which would have more to sell and more to purchase than at present. By the augmentation of the wealth and population of a part, not only would those belonging to that part be improved in their circumstances, but the whole would be more powerful, and the public burdens being more divided, might press less heavily on each individual.

These advantages would probably be extended by improving the navigation of the Greenbrier also.

Should New-river be rendered a safe and easy channel of communication, between the Ohio and the commercial towns on James-river, the subject will assume a more important aspect, and the advantages may be estimated on a larger scale. Not only will that part of our own state which lies on the Kanawha and on the Ohio, receive their supplies and send much of their produce to market through James-river, but an immense tract of fertile country, a great part of the states of Kentucky and Ohio, will most probably give their commerce the same direction. All that part of the state of Kentucky which lies above Louisville, and all that part of the state of Ohio whose trade would pass through the river of that name, might reasonably be expected to maintain a large portion of their commercial intercourse with the Atlantic states, through the James or Potowmac. Certainly in a contest for this interesting prize, the states through which those rivers run have geographical advantages, the benefit of which they can lose only by supineness in themselves, or by extraordinary exertions in others. It is far from being impossible, that even the south-western parts of Pennsylvania may look down one of these rivers for their supplies of goods manufactured in Europe.

Let the importance attached by men best acquainted with the subject to the commerce of the west attest its value. The exertions which other states appear to be making to secure it, will probably awaken the attention of Virginia to that part of it which should naturally belong to her.

There is still another aspect in which this subject deserves to be viewed.

That intimate connection which generally attends free commer-

cial intercourse, the strong ties which are formed by mutual interest, and the interchange of good offices, bind together individuals of different countries, and are well calculated to cherish those friendly sentiments, those amicable dispositions, which at present unite Virginia to a considerable portion of the western people. At all times the cultivation of these dispositions must be desirable but in the vicissitudes of human affairs, in that mysterious future, which is in reserve, and is yet hidden from us, events may occur to render their preservation too valuable to be estimated in dollars and cents.

The advantages which may result to Virginia, from opening this communication with the western country, will be shared in common with her by the states of Kentucky and Ohio.

Considering it as a medium for the introduction of foreign articles into those states, it has claims to their serious attention.

The proposition that a nation finds its true interest in multiplying its channels of importation, admitting them to be equally convenient, is believed to be incontrovertible. In addition to those arguments in support of this proposition which belongs to every case, the situation of the western states suggests some which are peculiar to themselves, and which well deserve their consideration.

The whole of that extensive and fertile country, a country increasing in wealth and population with a rapidity which baffles calculation, must make its importations up the Mississippi alone, or through the Atlantic states. When we take into view the certain growth of the country, we can scarcely suppose it possible that any commercial city on the banks of that river can keep pace with that growth, and furnish a supply equal to the demand. The unfriendliness of the climate to human life, will render this disparity between the commercial and agricultural capital still more sensible. It will tend still more to retard a population of that sound mercantile character, which would render some great city on that majestic river, a safe emporium for the western world.

In times of profound peace, then, the states on the Ohio would make sacrifices of no inconsiderable magnitude, by restricting their importations to a single river. But, in time of war, their whole trade might be annihilated. When it is recollected that the Mississippi empties itself into the Gulph of Florida, which is surrounded by foreign territory: that the island of Cuba and the coast of East Florida completely guard the passage from its mouth to the ocean: that the immense commerce flowing down its stream, holds forth irresistible allurements to cruizers, the opinion seems well founded, that scarcely a vessel making for that place could reach its port of destination.

But the length of the voyage up the Mississippi and Ohio, must be attended with delay so inconvenient to persons engaged in commerce, as to render a shorter route, though not less expensive, more eligible. For importation of many articles, there is much

reason to believe that a decided preference would always be given to the transportation through the United States, were that transportation rendered as easy as it is capable of being made.

The export trade during peace, so far as the articles exported were designed for a foreign market, would, more probably, pass exclusively down the Mississippi. But those articles which are consumed in the United States, as manufactures of hemp, would find their way to market through interior and shorter channels.

If the direct route through the Atlantic states would, for many purposes, be more eligible than that through the Gulph of Florida, which must be often connected with a coasting voyage to or from an Atlantic port, then the multiplication of those routes, if in themselves equal, by presenting a greater choice, and by accommodating more territory, must be desirable.

But your Commissioners are sanguine in the opinion, that the communication through the rivers they have viewed, if properly made, will possess advantages over every other, which cannot fail to recommend it to a large portion of the states of Kentucky and Ohio. All that part of the western country which draws its supplies and transports its produce through the river Ohio, and which lies east of Louisville and west of the Pennsylvania line, perhaps a part of the state of Pennsylvania itself, could probably use this route more advantageously than any other; unless, indeed, that through the Potowmac, connected with Monongehela, Cheat, or Yohaghena, should come into competition with it, for the eastern part of the country just mentioned.

That it would, for the importation of articles from Europe, and from the east, (with a few exceptions) and for the exportation of those which are consumed in the United States, be preferred to the voyage through the Mississippi, unless the introduction of steam boats should essentially vary the present state of things, may safely be assumed from the fact, that a land carriage between Pittsburg and Philadelphia or Baltimore, and a carriage up or down the Ohio, are now used for the purposes described, in preference to the route by New Orleans.

The present price for the transportation of goods from Philadelphia or Baltimore to Pittsburg, is understood to be from seven to ten dollars per hundred weight.

The price of transportation from Richmond, up James-river to the mouth of Dunlop's-creek, thence across the Alleghany to Greenbrier, and down to the mouth of the Great Kanawha, will certainly depend on the goodness of the road and the degree of perfection to which the navigation may be carried. Your Commissioners believe that a sound national economy would dictate such improvements as would reduce the price of freight, although the labor employed in making them might be procured by an augmentation of toll, and some expenditure of public money.

Should the navigation of James-river be rendered as safe and as easy as may be reasonably expected, and the Greenbrier and New-river be improved, in such manner as the object will justify, your Commissioners believe they hazard nothing in saying, that the expense of transporting one hundred weight from Richmond to the mouth of the Great Kanawha, will not exceed half the price of transporting the same weight from Baltimore or Philadelphia, to the same place.

The immense works meditated in New York, will certainly, if executed, give to that state great advantages in a competition for the trade of the lakes. But if other convenient and more direct channels be opened, it is not probable that the commerce of the Ohio will take the circuitous route by the lakes.

The expense of transportation from New York through the canal contemplated, can only be conjectured. The character of the rivers which would be used, is not well understood, but they must possess many advantages to give them a preference over the direct way through Virginia to the Ohio.

Your Commissioners, however, take the liberty to repeat, that the success of any attempt to obtain that share of the commerce of the west, to which this state, from her geographical situation and her rivers, would seem to be entitled, must depend entirely on the safety and cheapness of her navigation. A mode of transportation by water in itself insecure, or so laborious as to be little less expensive than carriage by land, will never change the channels in which the trade already flows.

The advantages to accrue to the United States, from opening this new channel of intercourse between the eastern and the western states, are those which necessarily result to the whole body from whatever benefits its members, and those which must result to the United States, particularly from every measure which tends to cement more closely the union of the eastern with the western states.

In those operations, too, which the exigencies of government may often require, this central channel of communication by water may be of great value. For the want of it, in the course of the last autumn, government was reduced to the necessity of transporting arms in waggons from Richmond to the falls of the great Kanawha. A similar necessity may often occur.

All which is respectfully submitted to the General Assembly, by

JOHN MARSHALL,
JAMES BRECKENRIDGE,
WILLIAM LEWIS,
JAMES M'DOWELL,
WILLIAM CARUTHERS,
ANDREW ALEXANDER.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA.

[ORDER AMENDING DECREE OF REFERENCE.]

On consideration of the motion to modify the decree of reference herein.

IT IS NOW HERE ORDERED BY THE COURT that said motion be and the same is hereby, sustained so far as to make the first line of paragraph 2 read "The extent and assessed valuation," and in all other respects that said motion be, and the same is hereby, denied.

June 1, 1908.

A true copy.

Test: JAMES H. McKENNEY,

(SEAL) Clerk of the Supreme Court of the United States.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.

STATE OF WEST VIRGINIA.

[ORDER APPOINTING SPECIAL MASTER.]

It is ordered by the Court that MR. CHARLES E. LITTLEFIELD, a member of this Bar, be, and he is hereby, designated and appointed as Special Master under the decree entered herein on May 4, 1908.

June 1, 1908.

A true copy.

Test: JAMES H. McKENNEY,

(SEAL) Clerk of the Supreme Court of the United States.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

RECORD
PART TWO

BEING THE EVIDENCE TAKEN AND PROCEEDINGS HAD
BEFORE THE SPECIAL MASTER
HON. CHARLES E. LITTLEFIELD
AT RICHMOND VIRGINIA
NOVEMBER 16TH, 1908 TO JULY 2ND, 1909.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT A-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

FOLD OUT IS TOO LARGE TO BE FILMED

PLAINTIFF'S EXHIBIT A-2

[The forms of Bonds which follow, 101 in number, Constitute the one Exhibit.]

Following are copies of the forms of the various bonds covered by this Exhibit arranged numerically with the following exceptions:

Loan Nos. 18, 20, 31, 32, 39, 53, 57, 58, 68, 70, 73, 78, 80, 82, 87, 90, 91, and J. R. 5, 6, 7, 8, 9, 10, 11.

No cancelled bonds for these issues were found filed with the Treasurer of Virginia.

LOAN NO. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 2.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes; another Act passed on the 10th day of March, 1834, entitled, An Act to amend the charter of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$ 1

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX

per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of March 1839, entitled, "An Act to authorize a further increase of the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of January 1834, entitled "An Act to increase the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

and to authorize a subscription thereunto on behalf of the State, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1837, entitled "An Act to authorize the Board of Public Works to subscribe to two-fifths of the increased Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day above written.

$

LOAN NO. 4.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd day of January, 1835, entitled, An Act authorizing the Board of Public Works to subscribe on behalf of the Commonwealth to the stock of the

RICHMOND FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1837, entitled, An Act to authorize a subscription on behalf of the State to the Stock of the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, of the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 25th day of February 1837, entitled, "An Act to authorize a subscription on behalf of the State of the stock of the

LOUISA RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th March 1838, entitled, An Act to authorize the

LOUISA RAILROAD COMPANY

to construct a railroad from some point on the line of their railroad to Charlottesville, and for other purposes, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of February 1837, entitled "An Act to authorize the

DISMAL SWAMP CANAL CO.

to increase their Capital Stock and to authorize the loans of the State to said Company to be converted into Stock", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 21st day of March 1837, entitled "An Act to amend the Act entitled an Act to provide for the construction of a road from

PRICES TURNPIKE TO CUMBERLAND GAP

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly, passed on the 2nd day of April 1839, entitled An Act to provide for the completion of that part of the road from

PRICES TURNPIKE TO CUMBERLAND GAP

which passes through the County of Lee" and a supplementary Act of 28th February 1842—the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of any Act of the General Assembly of the Commonwealth of Virginia passed on the 8th day of March 1842, entitled "An Act to amend the Act passed January 22nd 1838, entitled, an Act to authorize the county courts of the counties of

BOTETOURT, TAZEWELL, GILES, RUSSELL, MERCER, SCOTT & LEE

to borrow money for certain purposes." The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 9.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

UPPER APPOMATTOX COMPANY.

The principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 11.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the twenty-first day of March eighteen hundred and thirty-seven, entitled "An Act providing for the payment of the Subscription of the State to

THE JAMES RIVER and KANAWHA COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th day of March 1836, entitled "An Act concerning

THE RAPPAHANNOCK COMPANY"

and of an Act concerning the States subscription to

THE RAPPAHANNOCK COMPANY"

passed the first day of March 1838 the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person, or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 12.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth o
Virginia, unto heirs, executors, administrators, o
assigns, the sum of Dollars, bearing interest at SI
per centum per annum, from the day of payable at th
Treasury of the Commonwealth aforesaid, on the first day of Jan
uary and July in each year, being STOCK, created in pursuance o
an Act of the General Assembly of the Commonwealth of Virginia
passed on the 4th March 1836 entitled, An Act concerning the

RAPPAHANNOCK COMPANY" and Act passed March 1st 183

the principal whereof is irredeemable for twenty years from the
day of and afterwards to be redeemed at the
pleasure of the General Assembly.

This Certificate is transferable on the books of the Second
Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above
written.

$

LOAN NO. 13.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND. 18

BE IT KNOWN, That there is due from the Commonwealth of
Virginia, unto heirs, executors, administrators or
assigns, the sum of Dollars, bearing interest at SIX
per centum per annum, from the day of payable at the
Treasury of the Commonwealth aforesaid, on the first day of Jan
uary and July in each year; being STOCK, created in pursuance of
an Act of the General Assembly of the Commonwealth of Virginia,
passed on the 29th day of March 1838, entitled An Act to repeal in
part the fourth section, the Act entitled An Act to amend the several
Acts concerning the

PETERSBURG RAIL ROAD COMPANY"

and for other purposes", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 14.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 31st day of March 1838, entitled, "An Act authorizing a loan on behalf of the state, to the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 15.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators, o assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payabl at the Treasury of the Commonwealth aforesaid, on the first day o January and July in each year; being STOCK created in pursuanc of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 13th February 1838

"WINCHESTER AND POTOMAC RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from th day of and afterwards to be redeemed at th pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 16.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th March, 1838, entitled "An Act to provide for the Construction of a

TURNPIKE ROAD FROM STAUNTON TO PARKERSBURG"

and the third section of "An Act to provide for raising loans heretofore made to certain

RAILROAD COMPANIES

and for other purposes," passed 21st March 1839, the said loan to be redeemable at the expiration of twenty years from the day of , and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th February 1845, entitled, An Act for completing the

STAUNTON AND PARKERSBURG ROAD,"

and of An Act passed on the 8th April 1839 authorizing Loans for the payment of certain subscriptions and appropriations"; the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 17.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th day of March 1838, entitled "An Act to provide for the payment of the States subscription to the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY"

and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 19.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th day of March 1837, entitled, "An Act to au-

thorize a further subscription on behalf of the State to the Stock of the

RIVANNA NAVIGATION COMPANY"

as amended by an Act passed the 4th day of April 1838. The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 21.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1838, entitled, An Act concerning the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations",

VALLEY TURNPIKE COMPANY

Act 14th February 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth of Virginia aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of

Virginia passed on the 24th March 1838, entitled, An Act to provide for the construction of a road from

WINCHESTER TO STAUNTON

and for other purposes and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th February 1839, entitled, "An Act Concerning the

VALLEY TURNPIKE COMPANY"

and "An Act authorizing Loans for the payment of certain subscriptions and appropriations" passed 8th day of April 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 28th day of March, 1838, entitled, "An Act incorporating the

INDIAN DRAFT TURNPIKE COMPANY

(for the Red and Blue Sulphur Springs Turnpike Company) the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing loans for the payment of Certain Subscriptions, and Appropriations"

and An Act passed 23rd day of March 1839, entitled, An Act authorizing subscriptions on behalf of the Commonwealth to the original and additional Capital Stock of the

RED AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 24.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of April, 1839, entitled, an ACT authorizing a loan on behalf of the STATE to the

CITY POINT RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 25.

TREASURY OFFICE OF VIRGINIA.

RICHMOND. 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the second day of April 1839, entitled "An Act providing for the State's subscription to the Stock of the

PITTSYLVANIA, FRANKLIN & BOTETOURT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of 18 and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 26.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an ACT of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled "AN ACT authoriz-

ing loans for the payment of certain subscriptions and appropriations."

"NATURAL BRIDGE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 27.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the First of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839.

"DRAGON SWAMP NAVIGATION CO."

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 28.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns the sum Dollars, bearing interest at SI per centum per annum, from the day of payable at th Treasury of the Commonwealth aforesaid, on the first day of Ja uary and July in each year; being STOCK, created in pursuanc of an Act of the General Assembly of the Commonwealth of Vir ginia, passed on the 8th day of April 1839, entitled "AN ACT" authorizing Loans for the payment of Certain Subscriptions an Appropriations.

HOLLIDAYS COVE TURNPIKE COMPANY

The principal whereof is irredeemable Twenty years from th day of , and afterwards to be redeemed at th pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 29.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled AN ACT authorizing Loans for the payment of certain subscriptions and appropriations

CACAPON AND NORTH BRANCH TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 30.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled An Act authorizing Loans for the payment of certain subscriptions and appropriations"

SALEM AND PEPPERS FERRY TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 33.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth
Virginia, unto heirs, executors, administrators
assigns, the sum of Dollars, bearing interest at SI
per centum per annum, from the day of payable at t
Treasury of the Commonwealth aforesaid, on the first day of Ja
uary and July in each year; being STOCK created in pursuance
an Act of the General Assembly of the Commonwealth of Virgini
passed on the 8th April 1839.

"LEWISBURG AND BLUE SULPHUR SPRINGS TURNPIK
COMPANY"

the principal whereof is irredeemable for twenty years, from th
day of and afterwards to be redeemed at th
pleasure of the General Assembly.

This Certificate is transferable on the books of the Secon
Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year abov
written.

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LOAN No. 34.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of
Virginia unto heirs, executors, administrators o
assigns, the sum Dollars, bearing interest at SIX
per centum per annum, from the day of payable at the
Treasury of the Commonwealth aforesaid, on the first day of Jan-
uary and July in each year; being STOCK, created in pursuance of
an Act of the General Assembly of the Commonwealth of Virginia,
passed on the 8th day of April 1839 entitled "An Act authorizing
Loans for the payment of certain subscriptions and appropriations"

LAFAYETTE AND ENGLISH FERRY TURNPIKE COMPANY

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 35.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 12th day of February 1841, entitled, An Act authorizing the increase of the Capital Stock of the

VALLEY TURNPIKE COMPANY

and for other purposes; the principal whereof is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 36.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto executors, administrators assigns, the sum of Dollars, bearing interest at SI per centum per annum, from the day of payable at t Treasury of the Commonwealth aforesaid, semi-annually, on t first day of January and July, in specie or its equivalent; bei STOCK created in pursuance of an Act of the General Assembly the Commonwealth of Virginia, passed on the 25th day of Marc 1842, entitled, "An Act authorizing a loan to the

JAMES RIVER AND KANAWHA COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure the General Assembly.

This Certificate is transferable on the books of the Secon Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year abov written.

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LOAN No. 37.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at SE per centum per annum, from the day of payable at th Treasury of the Commonwealth aforesaid, on the first day of Jan uary and July in each year; being STOCK, created in pursuanc of an Act of the General Assembly of the Commonwealth of Vir ginia, passed on the eighth day of April 1839, entitled, "An Act au thorizing loans for the payment of certain subscriptions and appro

priations, "and An Act entitled, "An Act to increase the CAPITAL STOCK of the

LYNCHBURG AND BUFFALOE SPRINGS TURNPIKE COMPANY

etc., for other purposes, passed the 14th day of March 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate, is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 38.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, administrators, executors or assigns, the sum of Dollars, *being* interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations."

THE SALEM AND NEWCASTLE TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 41.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March, 1847, entitled An Act to authorize the Board of Public Works to purchase two-fifths of the Stock of

THE ALEXANDRIA CANAL COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 42.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing

LOANS for the payment of certain Subscriptions and Appropriations,

GILES, FAYETTE AND KANAWHA TURNPIKE COMPANY.

Act 1st February 1847, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 43.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March 1847, entitled "An Act to provide for the Completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes, the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the Pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 44.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions and Appropriations and An Act passed 8th March 1847, entitled, "An Act to provide for the Construction of a Turnpike Road from the Richlands in Tazewell to the Kentucky Line, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 45.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of March 1847, entitled, "An Act providing for the extension of

LOUISA RAILROAD TO THE EASTERN BASE OF BLUE RIDGE"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 46.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th day of March 1847, entitled, "An Act incorporating the

RICHMOND AND DANVILLE RAILROAD COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of January, 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMOUNT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions, and Appropria-

tions," and an Act passed 14th January 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMONT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 48.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the third day of February 1848, entitled, "An Act authorizing a loan by the Commonwealth to the

RAPPAHANNOCK COMPANY"

the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 49.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 24th day of January 1848, entitled, "an Act to provide for the extension of the

SOUTH-WESTERN ROAD FROM ITS EASTERN TERMINUS TO THE TOWN OF BUCHANAN"

and also of an Act passed 29th March 1848, "entitled an Act prescribing the mode of raising funds for appropriations from the

PUBLIC TREASURY FOR INTERNAL IMPROVEMENTS",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations" also an Act passed 8th March 1847, entitled an Act to amend the Act passed 5th March 1846 incorporating the

HARDY AND WINCHESTER TURNPIKE COMPANY.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22nd day of February 1848, entitled, "An Act to provide for the completion of the

HARDY AND WINCHESTER TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year abo written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at Si per centum per annum, from the day of payable s the Treasury of the Commonwealth aforesaid, on the first day of Jan uary and July in each year; being STOCK, created in pursuance o an Act of the General Assembly of the Commonwealth of Virginia passed on the 15th day of March 1849, entitled An Act to increas the State subscription to the Capital Stock of the

HARDY AND WINCHESTER TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from th day of and afterwards to be redeemed at th pleasure of the General Assembly.

This Certificate is transferable on the books of the Secon Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th March 1849.

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th February 1848. Entitled, An Act to provide for Macadamizing the

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

LOAN No. 52.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at SI per centum per annum, from the day of payable a the Treasury of the Commonwealth aforesaid, on the first day of Jan uary and July in each year: being STOCK, created in pursuance o an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th day of March 1848, entitled, An Act to amend th Act incorporating the

WHEELING WEST LIBRARY AND BETHANY TURNPIKE COMPANY

passed the 20th day of March 1847," the principal whereof is irre deemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 54.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 2nd February 1848, entitled, An Act making an appropriation for bridges on the

STAUNTON AND PARKERSBURG ROAD"

and also of an "Act passed 29th March 1848," entitled An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvements," the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 55.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1848, entitled "An Act to provide for the completion of the

SOUTHWESTERN TURNPIKE ROAD."

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 56.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

LITTLE STONE GAP ROAD

Act 7th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 59.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

HOWARDSVILLE AND ROCKFISH TURNPIKE ROAD

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN NO. 60.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations"

ROCKY MOUNT TURNPIKE COMPANY

Act 19th February 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 61.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements"

CLARKSBURG AND BUCHANAN TURNPIKE COMPANY

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 62.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Vir-

ginia, passed on the 15th March 1849, entitled, directing an additional subscription on behalf of the Commonwealth to the Capital Stock of the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 63.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of March 1849, entitled, "An Act to authorize a subscription to the Capital Stock of the

VIRGINIA AND MARYLAND BRIDGE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 64.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849, entitled, "An Act to amend the Act

'INCORPORATING THE ORANGE AND ALEXANDRIA RAILROAD COMPANY,'

passed March 27th 1848," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 65.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations"

MARSHALL AND OHIO TURNPIKE COMPANY. ACT 11TH FEB'Y 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 66.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum, per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th March 1848, entitled, An Act to provide for the construction of the

WESTON AND FAIRMONT TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 67.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations,

MOOREFIELD AND NORTH BRANCH TURNPIKE COMPANY, ACT 10TH MARCH 1848,

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 71.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 12th day of March, 1849, entitled, "An Act to provide for macadamizing certain parts of the

STAUNTON AND PARKERSBURG ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 72.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain Subscriptions and Appropriations

COAL RIVER NAVIGATION COMPANY ACT 17th MARCH 1849

the principle whereof is irredeemable for twenty years from day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 74.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th March 1848, entitled An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements

WESTON AND GAULEY BRIDGE TURNPIKE COMPANY, ACT 25th MARCH 1848.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of Jan

uary and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March, 1849, entitled "An Act to amend the Act passed April 3rd, 1848 ch. 75, concerning the

"NEWMARKET AND SPERRYVILLE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March 1849,

"NEWMARKET AND SPERRYVILLE TURNPIKE CO."

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 76.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at SI per centum per annum, from the day of payable at th Treasury of the Commonwealth aforesaid, on the first day of Jan uary and July in each year; being STOCK, created in pursuance o an Act of the General Assembly of the Commonwealth of Virginia passed on the 8th day of April 1839, entitled An Act authorizin loans for the payment of certain Subscriptions and Appropria tions.

BERRYVILLE AND CHARLESTON TURNPIKE CO., ACT 12TH MARCH 1849.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 77.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th March 1849

"WILLIAMSPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 79.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 5th day of March, 1849, entitled, "An Act to incorporate the

BLUE RIDGE RAILROAD COMPANY

and for other purposes", the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 81.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849 entitled, "An Act authorizing a subscription for the Commonwealth to the Stock of the

VIRGINIA AND TENNESSEE RAILROAD COMPANY",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 83.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th March 1849, entitled, An Act to incorporate the

MOOREFIELD AND ALLEGHANY TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 84.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of March 1849, entitled "An Act amending An Act to incorporate the

SMITH RIVER NAVIGATION COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 85.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled "An Act to incorporate the

MORGANTOWN AND BRIDGEPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN NO. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvement"

OHIO RIVER AND MARYLAND ROAD, ACT 13TH JANUARY 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the public Treasury for internal improvement,

FISHING CREEK AND MORGANTOWN ROAD, ACT 13TH JANUARY 1848.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 88.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22d day of March, 1850, entitled "An Act providing for the

NEGOTIATION OF LOANS FOR THE PURPOSE OF INTERNAL IMPROVEMENT,

the principal whereof is irredeemable for twenty-five years from the , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 89.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of January 1850, entitled "An Act to provide for the completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes", the principal whereof is irredeemable for twenty-five years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN NO. 92.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on first January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 18th March 1856 entitled "An Act providing for and regulating the issue of Certificates of

REGISTERED STOCK

in lieu of Coupon Bonds, the principal whereof is redeemable after the day of (in lieu of Coupon Bond Number issued day of ,returned and cancelled.)

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 93.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1858, entitled, An Act for the relief of certain Internal Improvement Companies and Holders of Debts on account of the

CONSTRUCTION OF STATE WORKS

by an issue of Certificates of State Stock, the principal whereof is irredeemable for thirty-four years from the day of and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN NO. 1—REISSUE.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1840, entitled "An Act providing

for the re-issue of certificates of State Stock due the Bank of Virginia"

J. R. Co.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

In pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th February 1823 entitled "An Act making more effectual provision to carry into effect the Act, entitled, an Act to amend the Act, entitled, an Act for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western waters, by the James and Kanawha Rivers, and for other purposes;" I, Treasurer of the Commonwealth of Virginia, do hereby certify, that the said Commonwealth is indebted to executors, administrators or assigns, in the sum of Dollars, with interest thereon from the date hereof at the rate of per centum per annum, payable semi-annually at the Treasury of Commonwealth aforesaid; the principal whereof is irredeemable for 20 years and afterwards to be redeemed at pleasure of General Assembly.

This Certificate is transferable on the books of the Second Auditor, by proprietor or proprietors, his, her, or their Attorney.

Witness my hand this day of 182

Countersigned.

$

J. L. LOAN No. 4.

TREASURY OFFICE OF VIRGINIA

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an "Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of February 1825, entitled "An Act making further provision to carry into effect the Act, entitled, "An Act, for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western Waters, by the James River and Kanawha Rivers, and for other purposes;" the principal whereof is irredeemable for twenty years, and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 1—N. W.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 19th day of March 1831, entitled, "An Act to provide for the construction of a turnpike road, from

WINCHESTER TO SOME POINT ON THE OHIO RIVER"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly within a period not exceeding fifteen years.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND. 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February 1834, entitled "An Act further to provide for the construction of the

NORTH WESTERN ROAD"

as amended by an Act passed on the 7th February 1838"; the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the GeneralAssembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. Loan No. 3.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1837, entitled, An Act further to provide for the construction of the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 5.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 26th day of January 1839, entitled, An Act to amend the Act, entitled, an Act to provide for the construction of the

"NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 6.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of January 1840, entitled an Act concerning loans heretofore authorized for the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1840, entitled, An Act to amend the several Acts concerning the

NORTH WESTERN TURNPIKE ROAD"

and an Act farther to amend the same passed 19th March 1840, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

BANK LOAN.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 19th day of March 1839, entitled, "An Act to provide for further subscriptions on the part of the State to

THE EXCHANGE BANK
and
NORTHWESTERN BANK OF VIRGINIA

the principal whereof is irredeemable for twenty years from the day of *in whole or in part, at the pleasure of the Commonwealth.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

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*This language is vague. Possibly words "And then to be redeemed" just before "in whole or in part at pleasure of General Assembly" were intended to be inserted.

J. R. & K. LOAN (SEPARATE REGISTER).

TREASURY OFFICE OF VIRGINIA.

RICHMOND.

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd March 1860, entitled, "An Act to amend the Charter of the

JAMES RIVER AND KANAWHA COMPANY"

the principal whereof is irredeemable for thirty-four years from the first day of January 1860, and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY EXHIBIT A-1.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York.

For the Plaintiff.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

THE AMOUNT OF THE PUBLIC DEBT OF VIRGINIA.

PARAGRAPH I OF DECREE.

Supplementary Statement of Bonds Guaranteed by Virginia Outstanding January 1, 1861.

Undetermined contingent liability of the Commonwealth of Virginia with respect to the Bonds of the Chesapeake & Ohio Canal Co., as follows:

187 6% Bonds of $1,000 } in broken series of numbers
226 6% Bonds of $ 500 } from No. 1 to No. 1,495 ... $300,000.00

bearing dates from Nov. 13, 1847 to Nov. 9, 1849.

Of this issue of Bonds the following were redeemed by the Commonwealth of Virginia, April 11, 1903, (Transfer No. 2888) in her settlement with the United States for Virginia Bonds held by the Secretary of the Interior for the benefit of certain Indian Tribes:

No.	10	$1,000.00
	482	1,000.00
	487	1,000.00
	488	1,000.00
	857	1,000.00
	872	500.00
	873	500.00
	1048	1,000.00
	1140	1,000.00
	1419	1,000.00
	1420	1,000.00
	1490	1,000.00
	1492	1,000.00
	1493	1,000.00
		$13,000.00

These Bonds are guaranteed by the Commonwealth of Virginia under Act of March 8, 1847, Chapter 107.

Paragraph 1 (after preamble) recites the terms of the Guarantee as follows:

"I, A. B., Treasurer of the Commonwealth of Virginia, in conformity to an Act of the General Assembly, passed on the day of in the year eighteen hundred and forty-seven, do hereby pledge the faith of the state for the punctual payment of the interest, and the ultimate re-

demption of the principal sum of money appearing due by the within (or above) bond, according to the terms therein specified.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Richmond, Virginia, this of —, Eighteen

A. B., Treasurer."

Payable 35 years after date of issue or in 1882, 1883 and 1884.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant agrees that the amounts shown above are correct, but denies that these bonds formed any part of the outstanding debt of the Commonwealth of Virginia on January 1st, 1861, or that they have since become such a debt; and claims that even if these bonds should be paid in full by the Commonwealth of Virginia, her remedy would lie against the Chesapeake & Ohio Canal Co., and not in any case against the State of West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BYRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph I of the Decree.

[*Vol. 4, May 5, 1909.*]

[*Cross-examination of Arthur G. Potter on Plaintiff's Exhibit A-1.*]

Mr. Carlisle: That is all. Take Exhibit A-1. This is a 254
schedule of bonds—

The Special Master: What exhibit do you refer to and what page?

Mr. Carlisle: A-1; the beginning.

The Special Master: The very beginning?

Mr. Carlisle: Yes. The first entry there is $161,600, on which there was outstanding on December 31st, 1860, $104,000. I will get you to state whether that $161,000 represents certificates of the same kind as the one you have just been speaking about—the James River Company.

The Witness: Yes, sir.

By Mr. Carlisle:

Q. So the others, the first one, No. 1—you do not know what that amount was?

A. I don't know what? 255

Q. You don't know what the amount of the first was?

A. Yes; $50,000.

Q. Then there were others there which brought the whole amount up to $161,000?

A. Yes, sir.

Q. Do you know whether or not those certificates are now held in the Literary Fund of the State of Virginia?

A. Those individual certificates are not held by the Literary Fund.

Q. You are sure of that, are you? I mean in the Treasurer's office. Perhaps I was mistaken about Literary fund.

A. I don't know whether they are in the Treasurer's office or not.

Q. You never saw them at all I understood you to say?

A. No, sir.

Q. That is all on that, then. On the last page of this summary schedule of bonds of internal improvement companies guaranteed by the Commonwealth of Virginia which were outstanding December 31, 1860—

The Special Master: That is the last page of Exhibit A-1?

A. Mr. Carlisle: Yes; and which were later paid by the State or converted to State bonds, there are quite a number of items there—

Mr. Harrison: What page?

Mr. McClintic: The last page, I think, or at least towards the last page.

Mr. Carlisle: General Anderson has his hand on it, I think. Here is the James River and Kanawha Company, 1823, total $475,475—

Mr. Anderson: The 23rd of March, 1839, is it? 256

Mr. Carlisle: That is the date of the authorizing act.

Mr. McClintic: We did not mean to put that in.

Mr. Carlisle: What do you know about that?

The Special Master: This item is on the last page of Plaintiff's Exhibit A-1.

Mr. McClintic: The last page we have on this exhibit.

The Special Master: I don't find that.

Mr. McClintic: Headed Summary Schedule of Bonds of Internal Improvement Companies Guaranteed.

The Special Master: Let us be sure we are talking about the same thing. That is page 4 of mine.

Mr. McClintic: The pages may have been changed.

The Special Master: We must have them arranged so there will be no confusion. I shall have to ask you, Mr. Potter, to take the exhibits of West Virginia which are in your hands and those in mine and see that they are harmonious. I cannot stop every little while to correct the pages. Will you please attend to that during recess?

The Witness: Yes, sir.

By Mr. Carlisle:

Q. Did you make any investigation of this item that I have just read?

A. We examined the guaranteed bond registers and made a list of the bonds which were funded, cancelled or otherwise disposed of, after January 1, 1861.

Q. After 1861?

A. Yes, sir; those that were disposed of after that date we assumed to be open on that date.

Mr. McClintic: I would like to ask a question if I may be permitted.

The Special Master: Certainly. 257

r Mr. McClintic:

Q. Was not that actually assumed, that $475,000, by the State of irginia, by the act of March 23rd, 1860?

A. I cannot answer that question.

Q. You made no examination of the acts to see whether it was iaranteed or owed by the State at that time, did you?

The Special Master: Is it your question whether or not they were r the first time assumed?

Mr. McClintic: As an actual obligation of the State, on the 23rd March, 1860.

The Special Master: For the first time?

Mr. McClintic: Yes. Previous to that they were a guaranteed debt. understand.

Mr. Carlisle: We say a contingent debt.

The Special Master: The question is whether or not on that date ey were assumed for the first time as an absolute liability. That ou do not know?

The Witness: I cannot answer that question without referring to y other papers.

y Mr. Carlisle:

Q. Did you look into any of these items shown on the page to hich I have referred for the purpose of ascertaining the exact na- ire of the guarantee of the State to see exactly what the State did?

A. Yes; I searched among the records of the Treasurer's office, nd found copies of all these guaranteed bonds except two. That as the 8th and 9th items on this page here covered by my foot note t the bottom of the page.

Q. Were those guarantees of the principal sums or were 258
ey guarantees of the interest only, or guarantees of divi- ends; in what form did you find those guarantees?

A. I cannot say at this time, because I have not the bonds before e. I have no records to show; I don't remember.

Mr. Anderson: You have the records?

The Witness: I have not the records here. We have them, but ot here. I don't remember the exact terms of those guarantees.

y Mr. Carlisle:

Q. Did you read the acts of the Legislature under which these uarantees were made?

A. I believe I read them all.

By Mr. McClintic:

Q. Did you read the act of March 23, 1860, in reference to the James River and Kanawha Company?

A. I don't know.

Q. You don't know whether they were actually assumed by the State, or not, before 1861, then?

A. No.

Mr. Carlisle: The treasurer is willing to come over and bring this certificate about which the witness has testified—certificate No. 1.

The Special Master: You say it can be produced?

Mr. Carlisle: Yes; I understand he is willing to produce it.

The Special Master: I understand that all the original sources of information—

Mr. Anderson: Do I understand that you request that now? 259

Mr. Carlisle: Yes; because I want to examine this witness about it.

Mr. Anderson: Now?

Mr. Carlisle: Not this minute.

The Special Master: If you can get it without inconvenience suppose you send out for it.

Mr. Anderson: Do you wish to interrupt the examination to produce it.

Mr. Carlisle: I want him to produce it so as to let the Master see whether it is an obligation of the State of Virginia or a debt due to Virginia.

The Special Master: Let some messenger go out then, and have the treasurer bring it in.

Mr. Carlisle: We have a copy.

The Special Master: If they concede it is a copy you can probably go on then.

Mr. McClintic: On this page we are now considering, in regard to the guaranteed bonds, I find an item of Valley Turnpike Company, I believe it is, fifty-five. Was not that assumed by the State as a direct obligation prior to the 1st of January, 1861?

The Witness: In regard to such, I cannot state.

By Mr. McClintic:

Q. You made no examination to find out?

A. Not that I remember; no, sir.

Q. You have on there, then, one item of $300,000 and one of $200,000 of the Chesapeake & Ohio Canal Company. I refer you to the $200,000 item. Did you make any examination to see whether or not that has been paid by the C. & O. Canal Company?

A. No, sir. 260

Q. Either before or after the 1st of January, 1861?

A. No, sir; the records were incomplete in regard to that issue.

Q. Did you make any investigation afterwards to see whether these are still outstanding debts or not?

A. I did not.

Q. You simply found they were guaranteed and apparently outstanding on the 1st of January, 1861, and stopped there?

A. Yes, sir.

Q. There is another charge there of $100,000 for the Virginia Central Railroad, which was afterwards changed to the C. & O. Did you make any investigation to see whether or not that was paid by the original maker of the paper?

The Special Master: When? Prior to January 1st, 1861, or subsequently?

Mr. McClintic: Whether it was paid at any time by the maker.

The Special Master: Your question is general?

Mr. McClintic: Yes.

By Mr. McClintic:

Q. Did you make any examination to see whether or not that was paid?

A. No; we took the evidence on the bond registers.

Q. You did not attempt to find out whether it had been paid or not?

A. No, sir.

Q. There is another item of $13,900 of the James River & 261
Kanawha Company that stands in the same relation as the other James River and Kanawha Company, does it? In other words, you made no examination to see whether it had been assumed directly by the State, did you?

A. No, sir.

Q. There is an item of $15,000, Alexandria Canal Company. Did you make any examination to see whether it had been paid or not?

A. We made no examination in any of these cases because we did not have access to the books of these companies; we could not tell without access to their books whether the Company had taken up the obligation or not.

Q. Did you try to find out in any case whether they had been taken up or not?

A. Yes; we used every effort to determine from the State archives whether or not there were.

Q. Did you ask the Alexandria Canal Company people whether they had taken it up; did you make any attempt to find out from the company?

The Special Master: Did you make any application to any of the officers of the company?

A. I believe we did, yes sir. We wrote to the General Manager of the Chesapeake & Ohio Canal Company and asked him if the books were in existence, and he said he did not know anything about it.

The Special Master: Will you repeat that?

The Witness: We told him we would like to know if the account books of the canal with reference to the cost, etc., were conveniently at hand. He did not answer that question. He said, "I have none of the old maps and am not prepared to report on the matter."

262

By Mr. McClintic:

Q. Who is the General Manager of the Chesapeake & Ohio Canal Company?

A. G. L. Nicholson.

Q. Where does he reside?

A. At that time 5039 Q Street, Georgetown.

Q. Did you make any attempt to find out whether the $100,000 of the Virginia Central and C. & O. Railroad Company bonds had been disposed of, paid by anybody on the outside?

A. No.

Q. Is not the C. & O. Railroad Company's principal office in the City of Richmond?

A. Oh; the C. & O. Railroad. Yes, I believe it is.

Q. And you made no attempt to find out whether that $100,000 debt had been paid or not?

A. No, sir.

Q. Did you make any attempt to find out from the Alexandria Canal Company whether that $15,000 had been paid or not?

A. No; we did not ask that question.

Q. Why did you include those items guaranteed without attempting to find out whether or not they are still outstanding obligation?

A. Because in the case of the Alexandria Canal Company, it was a bankrupt company, and as long as the State guaranteed the old company they took care of the bonds.

Q. Who told you that?

A. I cannot tell. 263

Q. Was that information satisfactory to you?

A. It was satisfactory at the time, yes, sir.

Q. What were you told by anybody in reference to the Chesapeake & Ohio or Virginia Central $1,000,000?

A. I don't remember.

Mr. Carlisle: The treasurer is here now and if you will allow us to put him on the stand for a question or two—

The Special Master: He had better take the witness stand.

Whereupon

A. W. HARMON

(not sworn, testified as follows):

(Note.—It was agreed by counsel that the witness need not be sworn and that his testimony should be regarded as taken under oath.)

The Special Master: You are the Treasurer of the Commonwealth of Virginia?

The witness: Yes, sir.

By Mr. Carlisle:

Q. I ask you whether you as Treasurer of the State of Virginia have in your possession one or more certificates issued by the James River Company under the act of February 17th, 1820?

A. I have, sir.

Q. The originals?

A. Yes, sir. I have four.

Q. Will you produce them here, and let us use them for the present? We will have copies made for the record.

A. Yes, sir.

Mr. Carlisle: I will read a copy into the record.

The Special Master: Do you wish this to appear as an exhibit? You wish to retain the copies? 264

The Witness: Yes, sir.

Mr. Carlisle: That is my suggestion.

The Special Master: I think we can save time if the witness will hold the original while you read the copy, to see that it is correct.

Mr. Anderson: Do you know these to be correct copies, Mr. Dixey?

Mr. Dixey: Yes; they are correct, even as to the punctuation.

Mr. Carlisle: These are copies of the certificates themselves, and also the endorsements on the back. Will you please look at this.

Mr. Dixey: That endorsement is a foot note.

Mr. Carlisle: Will you please follow the original while I read this.

Mr. Carlisle read as follows:

CERTIFICATE No. 1. SIX PER CENT STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th day of February, 1820, entitled

'An Act to amend an act entitled "An Act for clearing and improving the Navigation of James River," and for uniting the eastern and western waters by the James and Kanawha Rivers,' and by the 13th section of which act the James River Company are authorized and required to borrow money, on the terms, and in the manner therein specified, the James River Company do hereby certify, that there is due from the James River Company unto the Presi- 265 dent and Directors of the Literary fund the sum of fifty thousand dollars bearing interest at the rate of six per centum per annum from the fifteenth day of July one thousand eight hundred and twenty, being so much money borrowed of the said President & Directors of the Literary fund by the James River Company, the interest on which, at the rate of six per centum per annum, shall be paid, by the James River Company, semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March one thousand eight hundred and twenty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly—which said debt is duly registered in the books of the James River Company, and this certificate thereof transferable only on said books—Certified under the common seal of the James River Company, and signed by John Coalter, the President of the said Company for the time, being and counter signed by Robert Pollard, their clerk.

(Signed) JNO. COALTER, President.

Teste:

(SEAL.) (Signed) ROBERT POLLARD, Clerk.

Registered 1 June, 1823.

J. BROWN, JR., 2d Auditor.

Note.—Those portions of this copy, which are underlined, 266 thus, appear on the original in manuscript.

Written in red ink across the face of the original:
Funded, Nov. 12/73, W. N. Newman.
Stamped in blue ink across the face of the original:
Commonwealth of Virginia. Funded, Nov. 12, 1873, Second Auds. Office.

Endorsed on the original in manuscript:

1821. June 15th. Paid half years interest due 1 January last, paid this day Robert Pollard.

August 24. Paid half years interest due 1 July last—paid this day (Signature dittoed.)

1822. February 16th. Paid half years interest due 1 January last, paid this day (signature dittoed.)

The Special Master: I understand that the defendants offer these exhibits under the 1st paragraph in the decree, and that they will be Defendant's Exhibits A-2, A-3, A-4 and A-5?

Mr. Carlisle: Yes, sir.

The papers referred to were accordingly marked as follows:

Certificate No. 86, Defendant's Exhibit A-3. 267
Certificate No. 87, Defendant's Exhibit A-4.
Certificate No. 88, Defendant's Exhibit A-5.

The exhibits referred to are as follows:

(Defendant's Exhibit A-3.)

CERTIFICATE No. 86.

In lieu of Original Certificate No. 67.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An act to amend the act, entitled An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow money on the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Six thousand dollars bearing an interest at the rate of Six per centum per annum, from the first day of July one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be

irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twenty, and from 268
and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally, or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esq., the President of the said Company for the time being, and countersigned by James Brown Junior their Clerk, the 5th July, 1827.

(Signed) WM. B. GILES, President

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: p Funded. November 12, 1873. W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

(Defendant's Exhibit A-4.) 269

CERTIFICATE No. 87.

IN LIEU OF ORIGINAL CERTIFICATES No. 61, 62, 63, 64, 65 & 66, OF 1,000 DOLLARS EACH.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," and by one other act passed the 28th February, 1821, entitled "An act to amend the act, entitled "An act to amend the act, entitled an act to amend the act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow

money in the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Six thousand dollars bearing an interest at the rate of Six per centum per annum, from the First day of July one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twen- 270
ty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally, or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esquire, the President of the said Company for the time being, and countersigned by James Brown Junior their clerk. 20th August, 1827.

(Signed) WM. B. GILES, President

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: Funded November 12, 1873, W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded. November 12, 1873. Second Auds Office.

(Defendant's Exhibit No. A-5.) 271

CERTIFICATE No. 88.

In lieu of Original Certificate No. 76.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An

Act to amend the act, entitled An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western waters by the James and Kanawha Rivers," and by one other act passed the 28th February, 1821, entitled "An act to amend the act, entitled An act to amend the act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow money on the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Three thousand dollars bearing an interest at the rate of Six per centum per annum, for the First day of July, one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twenty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly: which 272
said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esquire, the President of the said Company for the time being, and countersigned by James Brown Junior their clerk, 20th August, 1827.

(Signed) WM. B. GILES, President.

Teste:
(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: Funded November 12, 1873, W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

Mr. McClintic read aloud Exhibits A-3, A-4 and A-5, as hereinbefore set forth, the witness, Treasurer Harman, holding 273
the originals, and comparing them with the copies which were read.

By Mr. Carlisle:

Q. Can you state whether or not the books in your office show that prior to the 15th day of July, 1820, the Literary Fund lent to the James River Company $50,000?

A. The books of my company showed that they lent the Company?

Q. Yes. Would it pass through your office?

A. I have not looked to see. I don't think it would.

Q. Would it probably be shown on your books, or shown on the books of the Literary Fund?

A. It would be shown on the books of the Literary Fund, I think, sir.

Q. Do you know whether it is a fact or not that this certificate dated July, 1820, was issued as evidence of an indebtedness of the company to the State on account of the loan made?

A. Yes; I think these certificates show that.

Q. I will not ask anything about the other certificates because they are dated within a period when we admit that the debt was being created in other ways; so it would cut no figure on this question as to the beginning of the debt?

The Special Master: What do you understand this to mean: "Registered June 1st, 1823. J. Brown, Jr., Second Auditor"?

The Witness: I think the reason of it is that the Second Auditor's office was established in 1823, and after it was es- 274
tablished these matters were all of record in the Second Auditor's office.

Mr. Spooner: I think that will be clear to your Honor when we read the Act of 1823.

Mr. Carlisle: Which recites the loan.

Mr. Sponer: Which explains it.

The Special Master: These may be returned to the treasurer, I understand, the copies remaining on file as exhibits?

Mr. Carlisle: Yes.

The Special Master: Do you desire to cross examine, Mr. Conrad?

Mr. Conrad: No sir.

The Special Master: Do you desire to cross examine, Mr. Attorney General?

Mr. Anderson: No sir.

Whereupon

ARTHUR G. POTTER,

resumed the stand for further
Cross Examination.

By Mr. McClintic:

Q. I want to ask one other question on the line I was on when the treasurer came in.

In your total of the public debt of the Commonwealth of Virginia on the 1st of January, 1861—and please state the amount so we will be sure we understand each other correctly. 275

Mr. Anderson: Page 5?

Mr. McClintic: I ask him to state the amount.

Mr. Anderson: I don't know which page you are speaking about.

Mr. McClintic: I don't know either.

The Witness: $34,707,908.96.

By Mr. McClintic:

Q. Does that include this guaranteed debt?

A. No sir.

Q. The guaranteed debt is in excess of that different amount?

A. In excess of that different amount.

Q. Does that include the amount held by the literary fund of the State of Virginia.

A. It does.

Q. How much do you include of the bonds in the literary fund on the 1st of January, 1861?

A. $1,037,567.33.

Q. How much do you include of the bonds of Virginia in the sinking fund the 1st of January 1861?

A. $1,329,557.20.

Q. And in this literary fund do you include the four certificates which have just been put in evidence?

A. No. 1; 86, 87, and 88, amounting to $665,000.

By Mr. Carlisle:

Q. Did you find any evidence in the public records, the original books or official reports of the officers of the state, anything to show that these bonds which were held in the literary fund and the board of public works on the 1st of January 1861, 275½ had ever been issued to the public and sold?

A. I did not examine them with the idea of finding out whether they had ever been in the hands of the public, no.

Q. You found nothing to indicate whether they had ever been issued by the state and put on the market and sold?

A. I made no examination.

Q. You made no examination to ascertain that?

A. No sir.

Q. That is all on that point.

TESTIMONY OF THOMAS B. DIXCY (Resumed).

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[*Vol. 5. May 6, 1909. Defendant's Exhibit A-1*]

By Mr. McClintic:

1. I hand you exhibit marked Defendant's Exhibit A-1.

If the court please, we desire to offer in evidence a statement of the debt under the 1st paragraph of the decree which we call defendant's exhibit A-1.

You have a copy of that?

A. I have a copy marked "original."

Q. Will you please look at that and identify that?

A. This is the one made by me.

(The document referred to was accordingly marked by the stenographer Defendant's Exhibit A-1.)

500

By Mr. McClintic:

Q. Was this signed by you on the 1st day of December?

A. It was signed by me on the 1st day of December.

Q. State to the Commissioner what that exhibit contains in a general way.

A. This is an exhibit showing the amount of State bonds or certificates of indebtedness issued on account of various public improvements, itemized, and the total thereof, from March 19, 1823, to January 1st, 1861, showing the number of the loan, the act of the legislature under which the certificate was issued, the rate per cent, the total amount issued, and the disposition of parts of the entire authorized issue from time to time; and the amount of the public debt outstanding on the 1st day of January, 1861, of each individual issue of these bonds or certificates of State debt.

Q. What amount do you report as being outstanding on the 1st day of January, 1861?

A. On page 7, $32,919,863.93.

Q. Does that total contain therein anything on account of the bonds held by the Literary Fund?

A. It does not.

Q. Does it contain anything on account of the bonds held by the Sinking Fund?

A. It does not.

Q. Does it contain anything on account of guaranteed bonds which were made by other parties and guaranteed by the State at the time?

A. It does not.

Q. Have you personally examined each of the items that 501
make up this schedule?

A. I have personally examined each of the items and I made the schedule.

Q. Is this schedule from such an examination?

A. It is correct from the books of original entry of the Commonwealth of Virginia.

Q. Does that total just given by you as of January 1, 1861, contain anything for interest that might have accrued in the year 1860?

A. No, sir; it does not.

Q. Mr. Dixey; did you examine the plaintiff's exhibit A-1, filed here some time since?

A. I have examined it.

Q. I find on the last page thereof certain items of what was called the guaranteed debt or bonds of the Commonwealth of Virginia which were outstanding January 1, 1861, inthe name of the James River & Kanawha Company, three items; one of $475,475; one of $55,000; and one of $13,900. State, if you know, whether they were outstanding on the 1st day of January, 1861.

A. They were not guaranteed bonds. They had been assumed prior to that date by the Commonwealth of Virginia and were actual obligations of the Commonwealth of Virginia.

Q. Are they included in the total given by you of the Virginia debt?

A. Yes; they are.

Q. I find on the same page of plaintiff's exhibit A-1, two items: Chesapeake & Ohio canal, $300,000; the Chesapeake & Ohio Canal Company, $200,000. State, if you know, whether those were outstanding, on January 1st, 1861? 502

A. The item of $200,000 was not outstanding. It had been retired prior to January 1st, 1861. The item of $300,000 appears to be still outstanding.

Q. You mean outstanding at this time?

A. Still outstanding; yes, sir. We are informed that the books containing the record of that were destroyed in the Baltimore fire.

By the Special Master:

Q. Do you mean of the $300,000 item?

A. Yes.

Q. You do not include the $200,000 now?

A. That was retired, had been retired prior to January 1st, 1861.

By Mr. McClintic:

Q. How retired?

A. They had been paid off, taken up by the company.

Q. The $200,000 item had been paid and it was no longer an obligation of anybody?

A. It was not an obligation; no, sir.

Q. On the same exhibit 1 find "Virginia Central Railroad"——

The Special Master: Does the $300,000 enter into your aggregate?

The Witness: No, sir; it does not. As a State obligation. Their status is still undetermined. There is no principal obligation on the part of the Commonwealth of the State of Virginia for those bonds as yet. 503

By Mr. Anderson:

Q. You mean the Chesapeake & Ohio canal?

A. Yes.

Q. No obligation as guarantor?

A. No; not as yet.

The Special Master: Guarantor of the principal sum?

The Witness: They guaranteed interest and the ultimate payment of the principal, and they have not yet paid the principal.

By Mr. McClintic:

Q. On the same page I find "Virginia Central Railroad", the name of which was afterwards changed to the C. & O. Railroad, $100,000. What has become of that, if you know?

A. In the refunding mortgage of the Chesapeake & Ohio Railroad I believe that obligation was assumed. I was so informed by Mr. Henry T. Wickham, General Solicitor of the Company. It was paid off by the Company.

The Special Master: So that does not exist as a liability against any one?

The Witness: No, sir.

By Mr. McClintic:

Q. On the same page I find "Alexandria Canal Company, $15,000." Tell the Commission what you know about that, as to its existence or non-existence, and if paid, by whom?

A. I am not testifying from exact knowledge now, sir. There is a report in the files of the Circuit Court here in Richmond to the effect that those bonds have been paid. I sent a man to Alexandria and made inquiry there and they said that in the course 504 of the suit (the Mayor and the Auditor of Alexandria told me this) the matter had been transferred to Richmond, and they thought

it was on record there. Inquiry into the records developed that fact in the report of the Commission. They referred to that in the report of the Commission. They referred to that loan as having been paid.

The Special Master: Did it give the date of payment?

The Witness: I have it here in the papers. I haven't it immediately in front of me.

Mr. Conrad: Did you say paid by whom?

The Witness: It was paid not by the State.

By Mr. McClintic:

Q. The first item of the exhibit Plaintiff A-1 was outstanding December 31, 1860, say $104,000, which was apparently a part of an issue of $161,600. Was the sum of $104,000 outstanding December 31, 1860, as a fact?

A. That was not a State obligation.

Q. I understand, but I am asking was that sum, $104,000 was outstanding.

A. Conceding those conditions, there was not $104,000 outstanding. $65,000 of that issue of bonds, or of certificates of indebtedness were held by the Literary Fund.

Mr. Harrison: What do you mean by "those conditions"; what do you refer to?

The Witness: The conditions in the report.

By the Special Master:

Q. What about the balance of $104,000; do you account for that $39,000?

A. The balance of that was another loan altogether. That 505
remaining balance of $39,000 was not James River bonds at all, but bonds issued to the Presidents and Directors of the Bank of Virginia.

Q. Is it an obligation of the State of Virginia?

A. That $39,000 issued to the Bank of Virginia became an obligation on the State of Virginia in 1840.

Q. But the $65,000 you say never has become an obligation?

A. It has not, as shown by the original certificates presented here the other day, amounting to $65,000?

Q. Now in the hands of the Literary Fund?

A. They are not now. They were until 1871.

Q. They were in 1861?

A. They were in 1861, and until 1871.

By Mr. Spooner:

Q. Are those the certificates that were read here the other day?

A. Yes; those are the ones.

By Mr. McClintic:

Q. There were certain coupon bonds, I believe, without referring to the plaintiff's exhibit at the exact point, representing in pounds a certain amount. Did you find that amount as set out on plaintiff's exhibit A-1 correct?

A. I did not find it correct.

The Special Master: What is the particular item?

Mr. McClintic: I do not know where to look for it.

The Special Master: You ought to direct your inquiry specifically to it, because otherwise I cannot trace it.

The Witness: On page 6. 506

The Special Master: You must have the items specified and the pages, because I cannot follow this out without that. You say you think it is on page 6. What is the item?

The Witness: I think it is the third item from the bottom.

Mr. McClintic: It is on the second page of plaintiff's Exhibit A-1, included, I think, in some large items at the bottom of the page.

The Special Master: Well, that items—because it is necessary for me to trace this and it is difficult to do so unless you locate them.

Mr. McClintic: They were issued under the Act of the 29th of March, 1851, the bottom act on page 2 of plaintiff's exhibit No. 1.

The Special Master: That is at the bottom of page 3, the coupon bond?

Mr. McClintic: Page 2, as I have it.

The Special Master: Let us get all your exhibits harmonious with mine.

Mr. McClintic: I made a mistake.

The Special Master: Then it is page 3, the item marked No. 90, coupon bonds $14,947,500. Is that the item you inquire about?

Mr. McClintic: Yes. I will ask the stenographer to strike the other question out.

By Mr. McClintic:

Q. Did you examine the items composing the large item of coupon bonds?

A. I examined them all.

Q. Did you find an item of 375,000 pounds sterling? 507

A. Yes, sir.

Q. Please state to the court what you make that on your exhibit in American dollars.

A. It is shown on page 6 of defendant's Exhibit A-1, the third item from the bottom.

Q. You make it $1,815,204?

A. Yes, sir. I may say in connection with that, that it is shown on the Auditor's books that $5 is the par exchange, and I make it that it should be $4.8665.

Q. On that date?
A. On that date.
Q. And at what value in the plaintiff's exhibit?
A. $5 in the plaintiff's exhibit.
Q. Do you know what difference that would be?
A. $49,000 and odd dollars. I have not the amount immediately before me. It is a little short of $50,000.

By the Special Master:
Q. Have you got your notes so you can refer to them?
A. Yes, sir.
Q. Then put that into your testimony. You must give me the specific amounts on all items like that.
A. The exact amount of the difference?
A. Yes.
A. Between the $1,865,000, which would be the total at $5, and at the proper par of exchange, or $4,8665, is $49,759.50?

Mr. Harrison: Does the difference between yours and Mr. Potter's statement arise out of the difference you took in the matter of exchange? 508
The Witness: It is entirely a matter of exchange. That is to say, it was figured out $5 in the Auditor's books and on your statement.

By the Special Master:
Q. Is your only criticism of the item mentioned as $14,947,500. at the bottom of page 3, this one relating to the question of exchange?
A. I have not the plaintiff's exhibit before me and I cannot testify to that item from memory. Can I have that copy?
(After examination of paper) Will you state the question.

The last question was repeated by the stenographer as above recorded.

Q. (Continuing) That is, is there any other discrepancy between your computation and the computation of Mr. Potter, as appearing in that item?
A. No, sir; there is none.
Q. So there is that difference between the two only?
A. Yes, sir.

By Mr. McClintic:
Q. On what date was that power of exchange made?
A. January 1st, 1861?
Q. The date on which this outstanding account is fixed?
A. Yes, sir; the date of the account.

By Mr. Harrison:

Q. Did you see one of the bonds?

A. No, sir.

Q. You do not know what the bond said on its face as to the rate of exchange? 509

A. No; but it was entered in the Auditor's books at $5, and on your statement at $5. The obligation was not $5 at that date.

The Special Master: At what date was the entry made on the books, if you remember; that is, bearing on the question of exchange?

The Witness: I will have to go to the original books for that.

By Mr. McClintic:

Q. Tell the court, if you know, about an annuity of the James River Company on which the interest had been guaranteed by the State and which was funded before January 1st, 1861.

A. That is shown on this exhibit, on page 3.

Mr. Harrison: On your exhibit?

The Witness: On this exhibit, yes; on page 3. It is the last item under the head of the James River Company, shown in the total column as $350,000 and referred to in note 3 at the end of the statement. The note is as follows:

"The amount of $350,000 here shown was not evidenced by any form of certificate of debt prior to January 1st, 1861, but is the principal amount required to produce annually at 6 per cent interest the sum of $21,000, guaranteed forever to the stockholders of this Company (The James River Company) by the act of March 23rd 1860. It was later actually funded on this basis under the acts of 1871 and 1872, known as the Consol and Peeler acts."

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The Special Master: When you say no certificate of debt, you mean no certificate of debt for the State of Virginia?

The Witness: Yes. These certificates were drawing 15 per cent and the State at this time assumed this obligation and converted them, under this act of March 23rd, 1860, and issued bonds for $350,000, which funded them.

Mr. McClintic: Please take the defendant's Exhibit B-1.

Mr. Harrison: Are you passing now from your Exhibit A-1?

Mr. McClintic: Yes, sir.

Mr. Harrison: That schedule has been admitted in evidence?

The Special Master: Yes: A-1 has been introduced and admitted in evidence.

[*Vol. 6, May 7, 1909. Cross-examination of T. B. Dixey.*]

By Mr. Harrison:

Q. I understood you to say, Mr. Dixey, that the origin of the debt which you have been engaged in investigating com- 589
menced with——

A. March 19, 1823.

Q. Yes; and on your statement you take as the first debt created by the State of Virginia an issue of bonds which you describe as the James River Company No. 2.

The Special Master: On what page is that?

Mr. Harrison: I am on page 3, about the middle of the page of defendant's schedule.

By Mr. Harrison:

Q. That is correct, is it?

A. Will you repeat that.

Q. I say you begin with a debt which you describe on your schedule as James River Company No. 2, do you not?

A. Loan No. 2 of the James River Company; that is the first debt.

Q. Mr. Potter, in his schedule of the debt, begins with a debt described as James River Company No. 1, does he not?

A. Yes.

Q. The James River debt No. 1, with which Mr. Potter's schedule begins, was created February 17, 1820?

A. Yes, sir.

Q. And the James River debt No. 2, with which you begin, was created under the Act of March 19, 1823? 590

A. February 24th——

Q. February 24, I mean, 1823; that being a difference in time of some three years or more?

The Special Master: Three years and four months.

Mr. McClintic: Mr. Potter took in arrearages back to October 19.

The Special Master: Yes; from that up to March 19, would be about three years and four months.

By Mr. Harrison:

Q. Why did you not begin with the debt described as James River Company No. 1?

A. Because no part of that debt was a debt of the Commonwealth.

Q. What is your authority for that statement?

A. The act of February 17, 1820.

Q. You then base your statement on your construction of the Act of February 17, 1820?

A. My construction, which was submitted to counsel.

Q. It was your own construction confirmed by counsel, or was it counsel's construction to you?

A. They instructed me to exclude any bonds issued under that act.

Q. Now, was there any difference in the way the James River Company's debt No. 1 was treated on the books of the Commonwealth of Virginia as compared with the way the James River Company's debt No. 2 was treated upon her books?

The Special Master: What was the difference in the original entries, if any? 591

The Witness: There was not any difference. There were no entries on the books of the Commonwealth until long after the actual creation of this debt, and then they were lumped together in one entry.

By Mr. Harrison:

Q. My question was—

A. No sir; there was not any difference.

Q. Then, so far as the books of the Commonwealth of Virginia show, the James River debt No. 1 was as much a debt of the Commonwealth as James River debt No. 2?

A. You are confining that question to the books? So far as the books show, that was the case, yes, sir.

By The Special Master:

Q. What was the date of the first entry you found on the books referring to these two items?

A. I would like to refer to my notes.

Q. You had better have your notes handy.

A. I can get that first entry or submit the original record.

Q. The question is what is the date of the first entry on the books that relates to either one or both of these items. I understood they were both included in one entry.

A. They were.

By Mr. Harrison:

Q. Were not the entries on the books of Virginia in regard to James River Company debt No. 2 on the same book with the entries in regard to James River Company debt No. 1? 592

A. The original entry included both.

Q. Was not that book a record of the obligations of the Commonwealth?

A. I would like to qualify that. I do not know that that is a book of the Commonwealth of Virginia at all. It is marked on the back "James River Company."

Q. Is this the book? I hand you now the book of original entry that we are talking about and I will ask you to identify it.

A. (After an examination of book). We were talking about different books. This is the register.

Q. That is a register of the bonds of the Commonwealth, is it not?

A. It is a register of sundry acts from the 24th of February, 1823, to the 11th of March, 1844, according to the back of the book.

The Special Master: Have you the book of original entry?

Mr. Harrison: What we are concerned with is what it contains.

The Witness: That is the endorsement on the back of the book.

Mr. Harrison: Now, tell us what it contains.

The Witness: This book contains here a record, not necessarily on the original entry, of certificate No. 1. It may be simply a register of that certificate.

The Special Master: Well, read the entry and put it in the record, so it will show for itself.

The Witness: It says No. I. 593

The Special Master: In the first place, give the heading.

The Witness: There is no heading.

The Special Master: Oh, yes. There is "No.," "Date," "Amount."

By Mr. Harrison:

Q. Let me ask you this question. Did you ever see that book before?

A. Oh, yes; we have gone over it carefully.

Q. Did you use it in your compilation?

A. Yes, sir.

The Special Master: Do you wish this entry in the record?

Mr. Harrison: Yes, sir.

The Special Master: Then let us have it. First give the headings, and then say No.— No. 1; and then date.

The Witness: "Date 1820: 15th July.

"Amount: 50,000.

"To whom issued: President and Directors of the Literary Fund.

"Place of residence, Richmond.

"When transferred. ————

"To whom transferred. ————"

Do you wish me to go further?

The Special Master: No, I think not. Whenever we put any of these entries in we will have as near as we can exact fac similes of the entries.

By Mr. Harrison:

Q. I will ask you to look at page 1 there and read a memorandum note entered there opposite the bonds No. 21 to 30 inclusive of the issue of February 17, 1820. Please read that note. I want to get it in the record.

A. The issue of February 17, 1820. 594

Mr. McClintic: What was that question?

(The question as above recorded was repeated by the stenographer).

By Mr. Harrison:

Q. Do you say that note does not relate to bonds issued under the act of February 17, 1820?

A. Just a second—

The Special Master: Do you want what the books show or the knowledge of the witness independent of the book?

Mr. Harrison: I want what the books show first.

The Witness: I may say that the only certificate issued under the Act of February 17, 1820, was certificate No. I, for $50,000. These bonds which you are alluding to come under the following act.

By Mr. Harrison:

Q. Please read that memorandum for me.

A. (Reading):

"1st May, 1840, certificates 21 to 30, both inclusive, cancelled under the Act provising for a reissue of certificates of State stock due the bank of Virginia, passed 18th March, 1840, and new stock issued therefor. See folio 22. (Part of $40,000.)"

Q. Am I to understand you to say that that was not a reissue under the Act of February 17, 1820? 595

A. It was not a reissue.

Q. On what authority do you make that statement?

A. As a matter of fact it was not a reissue. It was an issue by the State, a funding in 1840 of certain certificates of indebtedness which had been issued by the James River Company in 1822.

Q. Part of the note that I asked you to read refers you to folio 22, does it not?

A. Yes, sir.

Q. When you turn to folio 22 you find the explanation of that do you not?

A. There is a note on folio 22.

Q. Suppose you read that note and let us get it into the record.

A. The note on folio 22 that is referred to on folio 1 is as follows:

"Note. The certificates registered on the opposite page and numbered 1, 2, 3 and 4, amounting to $40,000, are issued in lieu of the following certificates issued by the old James River Company under acts passed 17th February, 1820, and 28th February, 1831, viz.: No. 21 to 55 both inclusive, $1,000 each (see folios 1 and 2); and No. 73 for $5,000 (see folio 3)."

Q. You filed on yesterday a copy of a certificate of stock, of indebtedness of the James River Company, marked certificate No. 86, in lieu of original certificate No. 67, which appears to be an obligation for $61,000, bearing interest at the rate of six per centum per annum from the 1st of July 1827. Did you treat that in your statement as part of the debt?

A. No sir; it is an obligation of the James River Company 596
to the State of Virginia; it is not an obligation of the State of Virginia.

Q. Why do you say that?

A. It says it on its face.

Q. Is that your only reason for saying so?

A. That and the acts that back it up, and the opinion of counsel in the matter.

Q. Yes. The books, however, showing the way in which the Commonwealth of Virginia treats it, do not back you up?

A. No, sir; it says in the books that it was a certificate of the old James River Company.

Q. I know it does; but it is also treated as an obligation of the State of Virginia, is it not?

A. After 1840 these particular certificates referred to here became an obligation of the State of Virginia. In 1840 the state bonds that were issued in place of, in lieu of the old certificates of indebtedness of the James River Company—

Q. Why should they become an obligation of the State of Virginia in 1840 if they were not an obligation of the State when they were issued?

A. I have no idea.

Mr. McClintic: They were reissued under an act of the 597
legislature, were they not?

The Witness: Yes, sir; they were reissued under an act of the Legislature. I do not know why the legislature assumed them at that time. That is what I mean to say.

By Mr. Harrison:

Q. Was not the reissue under the Act of 1840 a reissue of the loan created under the Act of February, 1820?

A. I do not understand it as a reissue at all. I understand it as an original assumption by the State of part of the debt which up to that time had been the debt of the James River Company.

Q. Is the word reissue used?

A. It is; it is used in the title of the Act.

Q. And is it not used on that book of original entry there?

A. It is; yes sir.

Q. Notwithstanding that, however, you do not so understand it?

A. Notwithstanding that, I do not so understand it.

Q. Does any part of the debt described on Mr. Potter's schedule as James River Company No. 1, which is $104,000, appear in your statement of the debt?

A. Yes sir; I think Mr. Potter includes in that statement two issues of bonds, one by the State and one by the James River Company. There were included in that issue 65,000 of the bonds of the James River Company and 39,000 of the bonds of the State issued by the president and Directors of the Bank of Virginia.

By the Special Master:

Q. Is this book here the book of the James River Company? 598

A. It is the register of the second auditor's office.

Q. It is a Commonwealth book, rather than the James River Company book.

A. The record was kept, this record was kept, in the Second Auditor's office. We have not the original book of the James River Company.

Q. This is the record of the State and not the record of the James River Company?

A. This is the record of the State, yes, sir.

By Mr. Harrison:

Q. And it covers the register of all the bonds of the State embraced in the period covered by the book?

The Special Master: And is not confined to the James River Company?

Mr. Harrison: No, not at all.

The Special Master: But other internal improvements?

The Witness: Yes.

Mr. Harrison: When this book was made it was made to include bonds issued under sundry acts from the 24th of February, 1823, to

the 11th of March, 1844, inclusive, and later these James River bonds were inserted.

By the Special Master:

Q. Before you leave this subject, get out the other books, if there are any that show the expenses and disbursements and receipts in connection with this enterprise, so we will have the contemporaneous original history. That is, I suppose there are other books that show disbursements.

A. This is the bond register pure and simple. It is apart from the journals.

Q. But there are books showing disbursements? 599

A. Yes, sir; receipts and disbursements.

By Mr. Harrison:

Q. I understand you to say that of the $104,000 shown by Mr. Potter's schedule of the James River debt No. 1 to be outstanding December 31, 1860, you do take account of $39,000 of it in your statement of the debt. Is that right?

A. Yes; we take account of $39,000 of that $104,000.

Q. Where does that appear in your statement?

A. It appears on defendant's Exhibit A, sheet 2, third item from the top, headed Bank of Virginia March 18, 1840; total issue $100,000. That $40,000 or $39,000 was included in that amount, and one other bond which was cancelled later.

The Special Master: Do you also include the $65,000?

The Witness: No sir.

Mr. Harrison: Why do you not include the $65,000?

The Witness: Because the $65,000 was not a debt of the Commonwealth of Virginia represented by these James River certificates that we presented the other day.

By the Special Master:

Q. Did it at any time go into the indebtedness of the State of Virginia?

A. Those $65,000 never became a part of the debt of the State of Virginia until 1871.

Q. And what happened then?

A. And they were taken up under this general Consul & 600
Peeler Act, the funding act.

Q. By virtue of the Act of the legislature?

A. Yes, sir: the act of 1871.

Q. Were other evidences of indebtedness issued for the purpose of taking them up?

A. At that time, yes, sir.

Q. In 1871?

A. The certificates bore on their face the statement that the funding was done in 1873; but it was under the Act of 1871.

Q. And that, having taken place after 1861, is not included in this statement?

A. No, sir.

Q. Is that the reason?

A. Yes, sir.

By Mr. Harrison.

Q. Then your explanation is that according to your facts, that $65,000 that you exclude as a part of the debt of the State of Virginia prior to 1861, did become a part of the debt of the State of Virginia in 1871?

A. It was assumed by the Commonwealth in 1871.

By the Special Master:

Q. And your theory is that up to that time it was not a part of the indebtedness?

A. Yes, sir.

Q. And for that reason you did not include it?

A. Yes, sir.

Q. Do I state it correctly? 601

A. Yes, sir.

By Mr. Harrison.

Q. The fact is, then, according to your testimony, that the State of Virginia assumed a debt of 1871 for which she had been under no previous liability of obligation?

A. Quite true, sir.

Q. You have treated $39,000 of that indebtedness, called the James River Company No. 1, as part of the debt of Virginia, have you not?

A. More than that: $40,000.

Q. $40,000?

A. Yes, sir.

Q. Well, say $40,000, then—

A. There is a difference of $1,000 there because Mr. Potter takes up one bond of the bank of Virginia and includes that in that issue.

Q. You have treated $40,000 of the $161,000 that constitutes the first debt, known as the James River Company No. 1 as part of the debt of Virginia?

A. Under the act of March 18, 1840. I think it is March 18.

Q. And you treated it as a debt created for the first time on that date?

A. I would like to modify that answer a bit.

Mr. Conrad: Oh, yes; you may modify it as much as you please.

A. (Continuing) The State issued obligations then—and I have said this before, and so I am just repeating—under the 602
Act of March 18, 1840. There were certain obligations of the State issued which replaced the obligations of the James River Company to the extent specified in the Act. It was not a reissue.

By Mr. Harrison.

Q. That statement of yours that it was not a reissue you have already explained?

A. Yes, sir.

Q. You say that notwithstanding the Act of the General Assembly and the Books of Virginia, you treat it as not a reissue.

A. That is true.

Q. And you were acting under the instruction of counsel?

A. Under the opinion of counsel; not under instructions. It was my own opinion as well.

Q. Mr. Dixey, in your investigation of the records in relation to the debt and in the statement you have compiled with respect to it, did you take any account of a hundred shares of the stock of the old James River Company which were donated by Virginia to General Washington under an Act enacted long prior thereto?

A. Of 100 shares of what?

Q. Of the James River Company, that the State of Virginia donated to him?

A. No, sir.

Mr. Anderson: Upon which the state assumed an obligation to pay $3,000 a year forever.

The Witness: Well, the State afterwards assumed an 603
obligation on the dividends of the old James River Stock; but it was not at this period, it was not prior to March 18, 1823.

By Mr. Harrison.

Q. Not prior to it, you mean?

A. Yes, sir.

Q. You mean her assumption of that liability was not prior to 1823?

A. No sir. It was March 23, 1860, that she assumed that guarantee forever.

By the Special Master:

Q. $3,000 per annum?

A. No; I am speaking of the annuity, the assumption of the annuity.

Q. Well, the annuity relating to this stock given to George Washington?

A. I do not recall particularly as to that.

Mr. Anderson: And he gave it to Washington & Lee College, which holds it now?

The Special Master: That was by virtue of an act of 1860?

The Witness: I do not recall as to that individual stock.

The Special Master: Well that is ascertainable.

Mr. Harrison: I want to know whether he had taken any account of that at all.

Mr. McClintic: May I ask if you took any account of it?

Mr. Anderson: Yes sir, we took account of it; and he has got it in there too, but he does not know it. 604

The Witness: It may be in the $350,000 annuity.

Mr. Anderson: Yes, that is where it comes. It is capitalized by the Act of March 23, 1860.

The Special Master: It is in there, but he had not discovered George Washington in connection with?

By Mr. Harrison.

Q. You give us first the aggregate public debt of Virginia, January 1st, 1861, $32,919,863.93. You do not include in that aggregate the debt held by the Literary Fund or the debt held by the Sinking Fund, do you?

A. No, sir.

Q. Mr. Potter's statement of the total amount of the debt does include those two items?

A. Yes, sir.

Q. And it appears to be, with those items included, $34,707,908.96.

The Special Master: Is not the six months interest included in that?

Mr. Harrison: No; he does not include any.

The Special Master: I find I have a pencil note, thirty million dollars and something.

Mr. Harrison: No—

The Special Master: Then the item of $34,707,908.96 is simply the principal sum exclusive of interest?

Mr. Harrison: Exclusive of interest, but including the two debts of the Literary Fund and the Sinking Fund.

The Special Master: And also including the $64,000 in the James River fund?

By Mr. Harrison:

Q. If you deduct the two items of the indebtedness held by the Sinking fund and the Literary Fund from the total shown by Mr. Potter, the aggregate amount of the debt then, according to this statement, would be $32,340,784.43, or $579,079.50 less than your statement appears to be. 605

A. That may be true, and probably it is true.

Q. I state that so as to save time.

A. Yes; I accept that.

Q. In other words, if you eliminate from Mr. Potter's statement of the debt the two sums held by the Literary fund and the sinking fund your statement of the debt exceeds by more than half a million Mr. Potter's statement of the debt?

A. That is true.

Q. Now, can you give me, if you please, the items that enter into and constitute that excess in your statement of the debt over Mr. Potter's?

A. I think I can very closely from memory. The certificates of indebtedness of the James River and Kanawha Company which were assumed by the State, which are shown in Mr. Potter's statement of guaranteed debt, although they had not been converted into State certificates, were outstanding in their old form but has been assumed by the State.

By the Special Master:

Q. You treated them as a direct liability, and he treats them as a guaranteed liability?

A. Yes.

Q. What does that amount to? 606

A. $375,000 odd as I recollect it.

Mr. Hogg: That was by the Act of 1860?

The Witness: Yes. (Referring to memorandum) $533,375, that we add.

By the Special Master:

Q. That leaves in the neighborhood of $400,000?

A. Yes.

Q. What does that consist of?

A. Well, I would reconcile it if your Honor wishes me to do so. We add $95,500 to the amount shown by the accountants for Virginia in addition to the amount I have already stated, being the

principal of the amount required to produce annually at 6 per cent. interest the sum of $21,000 guaranteed forever to the stockholders of the James River Company by the Act of March 23, 1860, and later—in 1871—funded at $350,000. That was the amount necessary to produce $21,000 which had been guaranteed forever on the old Stock, the actual stock of the James River Company. The net amount of that outstanding that had not been acquired by the State was $95,500, which we add to the statement of Virginia, the public debt. We deduct the $65,000 which was under discussion. We deduct the difference between the par of exchange on January 1st, 1861, and 4.8665.

Q. About $49,000?

A. Yes, sir; $49,795.50; the difference between the par of exchange and $5, on 373,000 pounds sterling, coupon bonds issued in that form by the Commonwealth of Virginia for sale abroad.

We also deduct the amounts that Mr. Harrison has already spoken of, held by the sinking fund, the amounts shown by Virginia as held by the sinking fund, $1,329,557.20. And 607
we deduct the amounts shown by the accountants for Virginia as held by the literary fund. That is, $1,037,567.33. That is the amount that they show. Less the $65,000 which we have already deducted and which is included in their amount, making a net of $972,567.33. Our total additions to the figures ($34,703,908.96) are $628,875. Our total deductions are $2,416,920.03; which reconcile the two accounts.

Q. What page of what exhibit do you find that?

A. We have not presented that as an exhibit yet.

Mr. Harrison: I will ask you to furnish on that point—

By the Special Master:

Q. Right on this point, the only discrepancy between the accounts presented by them and the accounts presented by you that can be related to the beginning of the account is the $65,000 item?

A. That is all.

Q. Is that right, Mr. Dixey?

A. As I understand your question, yes.

Q. That is the only item referrable to the beginning of the account?

A. Yes, sir.

Q. In order to harmonize this particular exhibit in which you state the amount of the debt with the account made by Virginia what else would you have to do except to add the $65,000?

A. I do not quite get that.

Q. In order to harmonize your statement of the debt pre- 608

dicated on beginning March 29, 1823, and their statement of the debt beginning with the fiscal year 1820, what have you to do to your account except to add to it $65,000?

A. We have to also add the holdings of the sinking fund and the Literary fund—well, practically all these items that I have read.

Q. No; but in order to harmonize so far as the beginning of the accounts is concerned, all that you have to do would be to add $65,000?

A. That is all, I think, sir.

Q. And as to this exhibit, then, that would be completely harmonized?

A. I think so. That is rather offhand, but that is my impression.

By Mr. Harrison:

Q. Now, as to the difference in the two statements, I will ask you to furnish us, if you please, with the items that enter into and constitute the difference between your statement of the debt and Mr. Potter's. I mean the excess, if you eliminate the two indebtednesses held by the Literary Fund and the Sinking Fund with the special schedule supporting those differences. Can you give us that detail?

A. In other words, the items that I have just read into the record?

Q. Yes.

The Special Master: That would simply require a statement of the items that you have already given. 609

By Mr. Harrison:

Q. We want not only the statements, but the details of the statements, how you arrived at them, and how you finally reached your summary in respect to them?

A. I will furnish you that immediately.

(The witness produced some papers.)

Q. Can you give me a copy of that?

A. Yes sir. Here is one. We have not introduced this yet and they are not marked.

Mr. McClintic: Does that answer your question? Does that give you what you want, or do you want to go into a lot of sub-schedules, do you want to go all through it?

The Witness: We have used their figures.

Mr. Harrison: (After examination of the paper given him by the witness.) This does not seem to be what I asked for. We want sub-schedules, precisely such as we submitted to you six months ago.

The Witness: Of what?

Mr. Harrison: Of the bonds, of all the debts in which this difference occurs, this difference of $549,000.

The Witness: I haven't got them. You have about all we have. You have all we have, practically. We did not prepare such schedules as those. I do not think they were referred to except in one or two instances.

By Mr. Harrison:

Q. Did you not say just now, that you used ours in making up yours?

A. We have taken your statement of bonds as held by the 610
sinking fund and the literary fund and used that in reconciling the difference between the debt as you show it and as we show it. That is what I intended to say.

Q. You say you have not got—

A. We have no such schedules as you made.

Q. Have you got such as you made?

A. We have working papers, yes.

Q. I want to see your working papers; I want to know how you worked up to that difference, I want a detailed statement. We want it for the purpose of testing, of comparing it with our work, the work with which we reached our result.

Mr. Conrad: The Master said the other day that all those working papers should be brought here for the purpose of examination.

The Special Master: As I understand it, there are only three or four items, as the case may be, where the accountants differ on this question of reaching the amount of the indebtedness.

Mr. Harrison: There seem to be about six, I believe.

The Special Master: Well, whatever the number may be; five or six; they are the only items which I apprehend you are interested to inquire about.

Mr. Harrison: That is all.

The Special Master: Now the witness submits here what he calls a reconcilement between the two statements of indebtedness.

Mr. Harrison: That is in total only. 611

The Special Master: I would suggest this, if it is agreeable. We have this statement of reconcilement and I suggest that it be marked Defendant's General Exhibit 1. Then you look at the items and if you are not satisfied with the items he presents, confine your examination to those particular items so as to see whether or not there are any items as to which you will require more details. Mr. Dixey will be able to give, or ought to be able to give, just exactly what he bases his reconcilement figures on. Is that clear?

(The paper referred to was filed and marked Defendant's General Exhibit No. 1.)

The Witness: I do not understand what is set on the statement.

The Special Master: You are not required to understand it at this stage.

The Witness: But I do not know what to admit. We would have to submit all of our papers, and it would be unintelligible to anybody except ourselves.

The Special Master: I do not think you will have a particle of trouble when you get down to the details.

Mr. Harrison: If he satisfies Mr. Potter I will be satisfied.

The Special Master: We will have Defendant's General Exhibit No. 1, which is the statement of reconcilement as to the debt. Now, Brother Harrison, you will take that up and see what you want to know about that. Take the items you want to inquire about.

By Mr. Harrison: 612

Q. I suggested to the witness that I would defer temporarily examining him about those items until I can be informed by Mr. Potter just what specific data he wants.

The Special Master: That is right. For the time being, then, the cross examination as to that point is suspended.

These are not paged, Mr. Dixey, so I will have them all paged.

[*Vol. 6, May 7, 1909, Cross Examination of T. B. Dixey.*]

By Mr. Anderson: 681

Q. I just wish to ask you, Mr. Dixey, whether you included in your statement of the outstanding debt of Virginia on the 31st of December, 1860, bonds issued to George McIntosh or any of them. I think it is $22,000—the McIntosh bonds?

A. Bonds issued by the State of Virginia to George McIntosh?

Q. They were issued to somebody.

A. They have been retired, Major. My recollection is they have been retired.

Q. They have all been retired?

A. That is my recollection of it, but it is right here in the exhibit. There were $25,300 issued, and they were all retired—purchased and cancelled by the Sinking Fund established under the Act of March 26th, 1853.

By the Special Master: 682

Q. Do they enter into your statement ultimately?

A. Not on January 1st. They had been retired previous to that. Their issue is shown here, and their retirement is shown here.

Q. Shown on your schedule?

A. Yes, sir.

Q. It does not make up a part of the debt?

A. It it not a part of the total.

Q. Because up to that time they had been paid?
A. They had been paid and cancelled.

By Mr. Conrad:
Q. They were not paid, in your judgment, by the substitution of other evidences of debts issued by the States?
A. Not those bonds of the State issued to George McIntosh.
Q. They were satisfied, extinguished, wiped out, you think, by payment made?
A. Yes, sir; the books so show.
Mr. Anderson: That is all. I have not traced them down.

By the Special Master:
Q. What is the first entry you find in these books relating to this item of $104,000 of bonds of the Loan No. 1 to the James River, independent of this bond account or bond register?
A. $161,600?
Q. Yes; where do you find the first entry in the books of Virginia that relate to that item?
A. Outside of this bond register? 683
Q. Yes.
A. Outside of the register?
Q. Yes; in the accounts?
A. Well, there are books kept by the second auditor that were opened on May 2nd, 1823. All these entries that had up to that time taken place and were recorded in the original books of the James River Company were transferred in one journal entry on May 2, 1823, to these books that were opened under the act of 1823 by the second auditor, whose office was established by the act of 1823.
Q. Was that simply a duplicate of the preceding entries?
A. Yes; it is not an original entry, in the sense that it is the first relating to this.
Q. Are there any original entries relating to that item showing the disbursement of money by the State of Virginia on account of that $161,000 item?
A. That is the first entry.
Q. Are there any entries on any books showing any disbursement of money, either for interest or principal, on account of that $161,000 item?
A. At any time?
Q. Yes, at any time? If so, what is the first one?
A. I have just got to get the scope of that clearly in my mind before I answer. Will you read that question.

The question was read as follows:
"Q. Are there any entries on any books showing any disburse-

ment of money, either for interest or principal, on account of that $161,000 item?"

A. Why, yes, in part. 684

Q. What is the first entry in relation to it?

A. I will have to look it up. I cannot say, from memory, but I can look it up and show it to you.

Q. What you have just given me is simply a duplication of the original bond entries, practically. This original book you have produced here is a register of the bonds issued. Then when the public works came in, in 1823, the first entry they made on their books was simply to duplicate those entries, so as to have a continuous record of the bonds that may have been issued?

A. That is apparently true; yes, sir.

Q. This No. 1 loan, although named in the bond record—was it or was it not a bond, or was it a certificate of stock issued by the James River Company?

A. It was not a stock certificate as stock is generally understood today. It was a certificate of indebtedness.

Q. Of whom?

A. Why, of the James River Company to the State.

Q. Then the loan indicated as No. 1, $161,000, was evidenced by certificates issued by the James River Company?

A. The President and Directors of the Literary Fund.

Q. And that is all the bond register shows?

A. Yes, sir; and the face of the certificate itself shows that it was registered in 1823, although it had been issued some years previous.

Q. Do any of those certificates connected with the $161,000, import any obligation either on the part of the principal or the 685 interest on the part of the State of Virginia, so far as you have been able to ascertain?

A. Not on the original certificates amounting to $161,000, due. The first time any of that debt was assumed by the State was under the Act of March, 18th, 1840, when the State assumed an obligation of $40,000 of those bonds, but that is aside from the $65,000. The $65,000 had never been assumed by the State. It was still an obligation of the James River Company to the State on January 1, 1861, and it was so held in the Literary Fund until 1871.

Q. Do you find any entries on the books of Virginia showing any payments on account of that $161,000, either the $39,000 or the $65,000, either by way of principal or interest at any time, and if so when is the first entry, and what does it show?

A. They were funded from time to time. I will have to look that up, your Honor. I cannot say indirectly from memory.

Q. Was there any payment of interest?

In the Act of 1820, if I remember it right there is a stipulation

that the State of Virginia shall guarantee the interest, not exceeding $12,000 a year, that is, any deficit of interest. That is it in substance, if I understand it.

A. In the Act, it makes the amount $12,000.

Q. That is a maximum?

A. Yes; but for that $12,000 the State was to receive from the James River Company more of these certificates of 686
indebtedness, so that it was a loan. It was a loan to the company, for which the State received a certificate.

Q. Did the State actually loan anything under those circumstances?

A. Yes; it did, certainly.

Q. When did it make the first loan?

A. That is the point I shall have to look up.

Q. That is what I want to find out? I want the entry.

Mr. Conrad: We can give it to you, sir, as Mr. Lightfoot is familiar with a series of acts beginning with the Act of February, 1817.

The Special Master: But I would like, when Mr. Dixey is able to get it, to have the information, either now or later. Then I want to see the original book myself and see just exactly what it shows. I want to see when that loan first became connected with the accounts of the State of Virginia with reference to disbursement, either for interest or principal.

Mr. Conrad: The Act of February, 1820, made the State liable for those certificates.

The Special Master: Of course we have the acts, but in addition to the acts I want the accounts of the State with that particular loan, so that I can see just exactly what the entries are.

Mr. Anderson: There is other evidence in that connection that we wish to offer.

The Special Master: Yes; this does not preclude you from anything. I simply want to get this information myself. 687
Have you anything by way of re-direct examination, Mr. McClintic?

Mr. McClintic: Yes, sir; I want to ask a question or two.

Mr. Anderson: By the Act of 1820 the James River Company was made the agent of the State.

The Special Master: Of course the acts of the legislature are open to us all, but I want to get, so far as I can, contemporaneous acts of the State in relation to the loan. I want to see just exactly what was done. Are you waiting for Mr. Dixey, Mr. McClintic?

Mr. McClintic: Yes, sir.

The Special Master: Is he looking up something for you?

Mr. McClintic: He is looking up that item for your Honor.

The Special Master: You need not bother with that now.

The Witness: I can show it to you in a minute or two.

The Special Master: Let your assistant be looking for it. You may re-examine Mr. Dixcy, Mr. McClintic.

Redirect Examination.

By Mr McClintic: 688

Q. Have you seen a letter dated December 19, 1821, written by John Coalter of the Board of Public Works of Virginia, published in the Journal of the House of Delegates, 1821-1822?

A. I have seen that published copy.

Mr. McClintic: We desire to offer in evidence a letter of John Coalter, then President of the James River Company, dated December 19, 1821, and published in the journal of the House of Delegates for the Session of 1821-22, at page 31. I have not the letter here in full, but I have an extract from it. The journal, however, can be reached.

The Special Master: It will be admitted.

By Mr. McClintic:

Q. In that letter it is said:

"It is understood to be admitted by money holders in other states that the funds pledged for the payment of the interest on this loan may be very ample, and their continuance, as well guaranteed by the faith of the State, as though the loan was on behalf of the State, and that the final redemption of the debt may be safely calculated upon; but while these things are not expressly guaranteed by the State, but merely susceptible of demonstration from the Acts of Assembly and other public documents, the loan, though a valuable one to those wishing to make permanent investments, is not so readily convertible in market, as to answer their view. It has, however, been pretty satisfactorily ascertained that a State stock, even at five per cent. would sell for more than 689 par which merely shows to those wishing to make permanent investments, that the stock now offered to the public at five and a half per cent. must be a most valuable stock."

Had you read that letter when you gave the opinion to Mr. Harrison a while ago that you regarded this—

A. I had read a copy.

The Special Master: Do you put in the full letter?

Mr. McClintic: Yes, sir. I have not the full letter here, however.

Mr. Anderson: What date is that?

Mr. McClintic: It is dated December 19, 1821.

The Special Master: Here is the entry found on page 29 of the

book, to be put in as a part of the answer of Mr. Dixey. This applies in *realtion* to the first entry of the books of Virginia, No. 1 loan, $161,000.

The Witness: I produce a book, a book of original entry as I understand it, so far as these entries are concerned, at page 29. September 30, 1823, are found the following entries.

The following is a correct transcript from the page referred to:

"30th September, 1823.

30	Interest on Loans to James River Co. for interest paid to 1 July, 1823, viz.:				690
	July 15 on certife No. 67 from 1 Nov. for to Farmers Bank of Va.	6,000	239.18		
	July 15 on certife. No. 1, 6 Mar. to P. and Directors L. fund for..	5,000	1,500.00		
	" 16 on certife No. 70 (from 1 Dec. 1822) to Catherine Hayes for..	4,000	122.63		
	" on certifie No. 71 from 1 Dec., 1822 to Llowey Hays for....	4,000	122.63		
	" 17 on cert. No. 21 to 55 incluse $100 each and on No. 73 for $5,000 to Bank of Va.	35,000	1,067.53		
	" on cert. No. 11 to 20 incluse. for $1,000 each on No. 72 $5,000 No. 73 $2,200 and 75 $3,300 to Bd. P. Works	40,300	1,145.75		
	" 23 on cert. No. 61 to 66 inclus. for $1,000 each & No. 76 $3,000 to Catherine Gamble	9,000	451.97		
	" 25 on certf. No. 69 (from 27 Dec.) to Mutual assce society &c..	5,000	153.29	Previous entries in this column 634	
	Total on loans prior to 25 Feb., 1823...			7,800	
				4,902.98	691

(July)				
30 do. 15 On certf. No. 11 to 60 incluse. to Farmers Bk. Virginia	50,000	821.90		
17 On certf. No. 1 to 10 & 61 to 110 for $1,000 each to Bank of Va.	60,000	919.52		
15 On No. 111 to 170 inclusive to Literary Fund	60,000	729.84		
Total on Loans No. 2 after 24 Feb. 1823....			2,471.26	
Whole amount of dividends & Interest				15,798.24
Whole amount of disbursements				88,293.38

By the Special Master:

Q. This is the first entry you find of any kind of the books of the Commonwealth in relation to the disbursement of the $161,000?

A. Yes, sir; the first original entry.

Q. Well, is there any other duplicate entry indicating an original entry in any other place of any disbursement of funds on account of the $161,000 item?

A. The transcripts in the front of the book seem to be copies of the original books of entry of the James River Company.

Q. Do the original books of entry of the James River Com- 692
pany prior to September 30, 1823, contain any record of any disbursements on the part of the State on account of this $161,000 item, so far as you know?

A. I may answer in this way. The Act of 1823 provided for the transcript of all these entries by the Second Auditor's office. It provides that all the receipts and all the disbursements of the James River Company shall be taken up on the books in the Second Auditor's office; they are matters of record merely, copies of transactions that have gone before, and I think the caption refers to the provisions of the Act.

Q. The caption reads as follows:

"Richmond, May 2nd, 1823.

"On this day the books and papers of the James River Company were deposited with me by Robert Pollard, Esq., late clerk and treasurer to the said company, in conformity with the directions of an Act of the General Assembly passed the 24th day of February, 1823, entitled 'An act making more effectual provisions to carry into

effect the Act entitled "an act to amend an act entitled an act for clearing and improving the navigation of the James River, and for uniting the eastern and western waters and for other purposes.'"

"JAMES BROWN, JR., *Second Auditor.*"

My question is whether you find any entry on the books of the James River Company or the books of the Commonwealth of Virginia earlier than this one found on page 29, showing any disbursements either for principal or interest on account of this item, $161,000? 693

A. We have never found the books of the James River Company, and this is the first entry on the books of the Commonwealth.

By Mr. Harrison:

Q. Did you look in the Treasurer's office to see if you could find payments on account of the indebtedness prior to December 30, 1823?

A. I do not understand you?

Q. I ask you if you examined the records of the Treasurer to ascertain if you could whether payments had been made through that office on account of the James River Company Debt No. 1, prior to September 30, 1823?

A. Yes; we found no such payments.

Q. You did examine and you found no such payments?

A. We found no such payments.

Q. Does not the Act of 1823 expressly provide that payments of interest on that original loan should be made?

A. Oh, that is a different matter, payments of interest. I did not so understand you. Yes; the State had said that they would pay $12,000, and later $18,000. I think the $18,000 was in the Act of 1823. There have been payments by the Treasurer on account of that interest.

The Special Master: Do the books of the Commonwealth show payments of interest prior to September 30, 1823?

A. On account of that $12,000 pledged, yes.

The Special Master: Then you can produce those entries.

By Mr. McClintic: 694

Q. When did the books of the James River Company start, what was the beginning of them, kept for the Commonwealth?

A. May 2nd, 1823.

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The Special Master: What will be the first thing we will take up this morning; shall it be the question as to the results reached by the accountants?

Mr. Anderson: We had best take up these schedules seriatim and submit them.

The Special Master: Very well. What have you to submit with reference to Plaintiff's Exhibit A-1, which relates to the first paragraph in the decree, in the line of a revised schedule, as 820
the result of the work of both accountants, if anything?

Mr. Anderson: Suppose Mr. Potter takes the stand.

The Special Master: Have you any schedule that has been agreed upon by the accountants on both sides? In the first place, has there been any change in attitude in reference to the date?

Mr. Harrison: Virginia starts from the same date that West Virginia starts from.

The Special Master: Enter upon the record that Virginia agrees with West Virginia upon the date when the accountants should begin, which date is—

Mr. Anderson: March 17, 1823.

The Special Master: March 17, 1823. Is that agreed to?

Mr. Dixey: March 19th, it should be.

The Special Master: I want to get into the record what we agree upon.

Mr. Carlisle: I still understand that the accountant on the other side includes in his statement that item of $65,000 which we say is shown to have been a debt before that date.

The Special Master: Let me make this statement. If these accounts begin on March 19, 1823, and that date is agreed upon by counsel on each side, the Master will not consider any item prior to that date. Now, then, with that statement from the Master, am I to understand that the counsel for Virginia and West 821
Virginia agree that that is the date when the accounts begin?

Mr. Carlisle: That is correct.

Mr. Harrison: Yes, sir.

The Special Master: That settles that. Now, let us have the next point. You are submitting, Brother Harrison, a schedule in lieu of Plaintiff's Exhibit A-1, which is under the first paragraph of the decree?

Mr. Harrison: Yes, sir.

The Special Master: Am I to understand that this schedule, marked Plaintiff's Substitute Exhibit A-1, is to take the place of Plaintiff's Original Exhibit A-1?

Mr. Harrison: Plaintiff's Revised Exhibit, I would say.

The Special Master: I want to get this on the record. I have now before me Plaintiff's Substitute Exhibit A-1.

Mr. Anderson: It is a supplemental statement to the other, really, because it does not go into the details. Therefore, it is supplemental.

Mr. Harrison: It is a revised statement.

The Special Master: Let us see about that for a moment; I want to get this record as short as we can get it. After we get through with what we agree to, I am going to ask what I asked before, but which I suppose they could not do. What I want to get on the record is exactly what we agree to now. Excuse me, but these suggestions go for nothing if they interfere with the views of counsel on either side. There is no occasion for lumbering up this record with any details that are not necessarily involved in an intelligent conclusion on the part of the Master or on the part of the
Court. It is conceivable that a large number of details must 822
have been prepared and have been prepared for counsel on
both sides, but if you have a lot of records about which there is no controversy, my own view is that there can be an agreement upon figures and we can shorten the record very much. We can get our schedules down to something as concise as possible, and it will be the better for all concerned. So that if you now have a schedule that presents, so far as either of you is concerned, under Paragraph 1 all of the figures you desire to have presented, eliminating details and containing summaries which adequately present the rights of either party, it seems to me the concise schedule you both agree upon is the thing that we ought to have.

Mr. Harrison: Let me state this, subject to correction by Mr. Dixcy or Mr. Potter. The supplemental schedule referred to shows that the total amount of the debt outstanding in the hands of individuals, or, in other words, in the hands of the public, on 1st of January, 1861, was $32,919,863.93; and as to that figure I understand the two accountants are in accord.

The Special Master: You are in accord on that, Mr. Dixcy?

Mr. Dixcy: Yes, sir.

Mr. Carlisle: Of course we do not agree, as I understand it, that there are not items in there which do not belong to the public debt. For instance, the bonds held in the Literary Fund. The figures, however, are correct.

Mr. Harrison: They are not in there.

The Special Master: You will have to be governed very 823
largely by the suggestion of Mr. Dixcy, who is unquestionably
familiar with the details. Of course I will not hold you to anything that may be agreed to if you inadvertently make a concession which would turn out to be adverse to your interests. In such a case, I would expect to relieve you from an admission so made; but what we want now is to get down on the record the items upon which we agree, so as to eliminate all possible controversy.

Mr. Harrison: In this Exhibit, Plaintiff's Substitute Exhibit A-1, I think the figures given for the total public debt of the Common-

wealth of Virginia, December 31, 1860, are agreed upon, as follows: $32,919,863.93.

The Special Master: The item thus stated by Mr. Harrison on the part of Virginia we understand to be agreed to by counsel for West Virginia and by the expert on the part of West Virginia?

Mr. Dixey: That is correct.

The Special Master: That item, then, will be reported by the Master as agreed to by the parties.

Mr. Harrison: Now, the point of this agreement relates to three subjects. Virginia shows in her schedule, in addition to the figures agreed to, $1,150,067.33, as held by the Literary Fund; also $1,329,557.20 held by the Sinking Fund; and $146,500.00 held by Board of Public Works; which three items added to the agreed amount of the debt outstanding in the hands of the public, make a total of $35,545,988.46, which Virginia rests upon as constituting the entire public debt on the date mentioned, December 31, 1860.

The Special Master: I want to make this inquiry. Refer- 824
ing to these figures, held by the Literary Fund, $1,150,067.33; held by the Sinking Fund, $1,329,557.20, and held by Board of Public Works, $146,500.00; do Mr. Dixey and counsel for West Virginia concede the figures are correct?

Mr. McClintic: The first item in the Literary Fund, as I understand it, contains the $65,000 which has been referred to.

Mr. Harrison: Yes.

Mr. McClintic: We do not concede that.

The Special Master: Then I will put it this way: Virginia claims that in addition to the $32,919,863.93 there should be added to the public debt the following items: Held by the Literary Fund, $1,150,067.33. As to this item, West Virginia disagrees, first upon the ground that it is not a proper part of the public debt; and, second, upon the ground that the aggregate is too large in any event. So that as to that item there is no agreement, the only disagreement being an item of $65,000 involved in the Literary Fund and claimed by West Virginia to have been contracted prior to the date of the beginning of the debt, and that it has never been a part of the State debt at any time. As to the item of "Held by the Sinking Fund, $1,329,557.20," West Virginia agrees to the accuracy of the amount stated and disagrees upon the question as to whether it is properly included in the public debt. Am I correct in that?

Mr. Carlisle: Yes, sir.

The Special Master: So that as to the amount both parties agree; as to classification, they disagree. The next item, "Held by Board of Public Works, $146,500.00." 825

Mr. McClintic: That is all right.

The Special Master: As to the amount of $146,500, Virginia and

West Virginia both agree; West Virginia contends that it ought not to be included in the public debt. Now, I would like to inquire whether there are any of the computations submitted in the schedules on the part of Virginia and West Virginia under paragraph 1 of the decree that are essential or illuminating upon the question of settling the first controversy as to the $65,000 in the Literary Fund.

Mr. Carlisle: Yes; we have the history of that $65,000 which was offered here before, certificates—

The Special Master: Those figures can be very easily segregated from both of the schedules, I suppose. So we can eliminate them from the other figures. Is there any difficulty about that, Mr. Dixey?

Mr. Dixey: No, sir.

The Special Master: Is there any difficulty about that, Mr. Potter?

Mr. Potter: No, sir.

The Special Master: Are there any items in Paragraph 1 that are essential and material in determining the question as to whether the amount claimed by Virginia, $1,329,557.20, should or should not be included in the public debt? That is, are there any items or details in that account, or is that simply a question of the construction of some legal provision?

Mr. Anderson: That is on the construction of a statute.

The Special Master: It does not involve any details, so 826
long as you agree on the amount. Are there any details contained in the figures given in either schedule that tend to establish or controvert that proposition?

Mr. Harrison: Not at all.

The Special Master: If so, we do not need the schedules for that purpose.

Mr. Anderson: The only question is upon that $65,000, and that is a question of the construction of the statute.

The Special Master: Are there any details in any of the schedules submitted by either party which are material as bearing upon the question as to whether or not the $145,500.00 held by the Board of Public Works is or is not a part of the public debt, so long as you agree upon the amount—

Mr. Anderson: That turns entirely upon the statute, I think.

Mr. Harrison: A question of construction.

Mr. Carlisle: As to all the bonds in the Sinking Fund—

Mr. Anderson: As to all the bonds in the Sinking Fund except $65,000.

The Special Master: That is a question of law.

Mr. Carlisle: It is a question of law as to whether Virginia can owe herself this money.

The Special Master: I do not want anything superfluous in this

record. I want you to have everything in that either of you think has any tendency to establish the contention of either, but, outside of that, it seems to me we have no occasion to lumber the record with anything that is unnecessary. 827

Mr. Carlisle: There is nothing, I think—

The Special Master: Why, then, are there any items in the accounts of either of the schedules presented on the part of Virginia and West Virginia that need to be considered in connection with the public debt except the subject which I am going to call attention to in a moment—the manner in which it was constructed? There are none, are there?

Mr. Harrison: I do not think so.

Mr. Anderson: There is one matter there, contingent liability, we thought should be mentioned.

The Special Master: I do not see it.

Mr. Anderson: It is a supplemental exhibit to Exhibit A-1.

The Special Master: Is that an additional item that you claim is a part of the public debt?

Mr. Anderson: Yes, sir; an additional item.

The Special Master: I am discussing this particular schedule.

Mr. Anderson: I understand.

The Special Master: As to this schedule I now have before me (Plaintiff's Substitute Exhibit A-1), as to this exhibit, there is nothing in the accounts that needs to be considered.

Mr. Anderson: No.

The Special Master: Now, the next question I want to inquire about is whether you agree in the statement of how and in what form the debt was evidenced and by what authority of law, and for what purposes the same was created, and the dates and nature 828 of the bonds or other evidence of said indebtedness. Now, do the accountants agree, having agreed upon the amount?

Mr. Dixey: I know of no differences between us there.

Mr. Carlisle: So far as this is an indebtedness. That question is behind it all.

The Special Master: I understand that. There is nothing conceded as to clasification. It is simply getting results.

Mr. Carlisle: That is all.

Mr. Dixey: We quote the names of the acts, the companies for which the bonds were issued, and Mr. Potter has done the same thing.

The Special Master: Do you agree on that?

Mr. Potter: Yes.

The Special Master: Then I will ask you to have one schedule on that matter. Give us a joint schedule. Is that agreeable?

Mr. Carlisle: We do not want these stricken from the record, but they will not have to be printed.

The Special Master: When we get the case all in, I want to have printed for the convenience of counsel and myself in the argument just exactly what we all think ought to be submitted finally to the Supreme Court of the United States. I want to make that record just as short and just as concise as I can. The shorter we get it, and the more concise it is, the more it will relieve counsel of argument, the more it will relieve me in coming to my conclusions, and the more it will relieve the Supreme Court of the United States. Such a record will be infinitely more satisfactory to 829
the Supreme Court. I am going to make the record, if I can, upon which you argue before the same record that I submit to the Supreme Court. For that reason, where you both agree on a statement of facts, it seems to me it is best to have one schedule rather than two schedules. Still, you need not withdraw anything already submitted. But when we come to print, it seems to me there is no necessity for submitting two schedules which involve the same figures and details. As I said before, when we get around to fixing this record up for printing, I shall request Virginia and West Virginia to select some gentlemen, in whom each have confidence, to take this record and go over it and cut out everything that has not any bearing nor any material weight in connection with the issues. Then the transcript record we have here will be as short as possible. After you have agreed on a great many of these items, there is a great deal of discussion it seems to me that can go out. Of course anything that you want in will go in. Do you get my point, Brother Carlisle?

Mr. Carlisle: Yes, sir.

The Special Master: For that reason, I see no reason why there should not be one joint schedule covering the question as to how and in what form the debt was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness; and if the accountants are not able to submit to me now, so I can have the record show that both parties agree upon the schedules selected, I will leave that. Are you ready now with that, Mr. Dixey?

Mr. Dixey: We have not got a schedule that we can both 830
sign now.

The Special Master: You know what I want?

Mr. Dixey: We have not got it in full. We have all the facts here.

The Special Master: That is only a question of type-writing, then, practically?

Mr. Harrison: It will be necessary to do more than agree on the fact that they are in accord—

The Special Master: Of course it is a matter of quite a good deal of importance to both parties, and as far as I am concerned I do not want anything here that may turn out to be an inadvertence or a misunderstanding; but what I want to do is that when I report an agreement by the parties here, of course I shall report it as a fact; but I do not want to report any agreement between you people, on these important questions, unless I have upon my record the facts showing just what the agreement was. For that reason, it would be much more satisfactory to me to have one schedule. I do not want to print both these schedules; there is no occasion for that. I do not want to print Virginia's schedule and leave out West Virginia's schedule, and I do not want to print West Virginia's schedule and leave out Virginia's schedule. Now, if you both agree on a schedule like that, I want to put that in the record to show that you both agree on it. Do you follow me, Brother Conrad?

Mr. Conrad: If your Honor please, I do not see how it is practicable to produce a composite schedule from these two discordant ones that are before you now. If they differed only in 831
items, it possibly might be practicable; but they do not differ in items. They differ not so much in items as in the plan of classification. The plan of classification adopted by Mr. Potter, for illustration, is that that has been pursued by the State government of Virginia from the beginning. The plan adopted by Mr. Dixey disapproves of the methods adopted by the State government, is a departure from it.

The Special Master: May I inquire this, Brother Conrad: Do these suggestions that you are now making relate to the question of how and in what form the debt was evidenced?

Mr. Conrad: No, no—

The Special Master: I understand that your experts both agree upon this question (reading from the decree):

"How and in what form the same was evidenced, by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness."

Mr. Conrad: I do not think there is any disagreement about that.

The Special Master: That is the only one I am making any suggestion about. We will make more progress if we go step by step. My suggestion is this: We will not encumber this record with Mr. Dixey's statement and Mr. Potter's statement, both of which are the same thing; we will put into the record one schedule as to that

part of the answer to Paragraph 1, and that schedule will be signed by Mr. Dixey and by Mr. Potter, and if the parties agree, we will show on the record that the parties do agree on those 832
facts. That eliminates them from controversy. Now, then, Brother Conrad, as to other features of the controversy, I do not expect Virginia or West Virginia to agree to anything that in any way tends to embarrass the rights of either. I thought I would take this up paragraph by paragraph, and when you reach a place where there is any suggestion of agreement that tends to embarrass the rights of your client, or the other side the same thing, of course as to that there is a disagreement, and as to that I will hear you. Do I make myself clear?

Mr. Conrad: Yes, sir.

The Special Master: So I will put into the record that the schedule submitted with reference to this part of Paragraph 1 that I have been calling attention to, and signed by both accountants, is agreed to by Virginia and West Virginia. Now, except as we have to recur to this Literary Fund, that disposes of Paragraph 1.

Mr. Potter: May I ask a question?

The Special Master: Certainly.

Mr. Potter: Need this joint schedule be in detail or simply as to this total?

The Special Master: Certainly it must be in detail, because here is what the paragraph requires (reading from decree):

"The amount of the public debt of the Commonwealth of Virginia on the 1st day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness." 833

It is impossible to answer that question without the details. As to that, we want the details signed by both of you, and when it comes to me thus signed I shall report that the parties agree upon that part of the Paragraph 1. Is there any objection to that?

Mr. Anderson: No, sir.

Mr. Carlisle: No, sir.

Mr. Anderson: This is supplemental, this is a supplemental statement of Paragraph 1. We think it should be noted in the record.

The Special Master: Let me make this suggestion. Suppose we do this. See how this appeals to you, Brother Anderson. What I am inclined to think I would like to do now is to go through the accounts where you all agree and eliminate those as subjects of controversy. Then we will go back and take up Paragraph 1, so far as you have additional matters to suggest, and so on all the way

through. Of course, when we come to print this case, we can take the testimony that relates to each paragraph and see that it is gathered together, so we will not have to be hunting all over the record to get what we want. It will be some work, of course, to do that, but when we get it done we will have a record that will be worth something.

Mr. Anderson: Your Honor proposes to go over all the schedules?

The Special Master: Yes. Let me get your suggestion.

Mr. Anderson: This can be disposed of in a moment, sir. By the Act of March 8, 1847, the State of Virginia guaranteed the payment of the interest and principal upon $300,000 of bonds 834
of the Chesapeake & Ohio Canal Company. The State guaranteed the payment of the interest without any qualifications. The guarantee of the interest was that the interest should be punctually paid, and the guarantee as to the principal was that it should be ultimately paid. The Chesapeake & Ohio Canal Company is still an existing corporation. It has not been found to be ultimately insolvent, so far as we can ascertain. So it cannot be determined now whether this liability will ever have to be met by the Commonwealth of Virginia.

The Special Master: In other words, this is a contingent liability?

Mr. Anderson: Yes, sir.

The Special Master: Your claim is that it should be included in the public debt?

Mr. Anderson: As an indeterminate and contingent liability?

The Special Master: Now this will be marked Plaintiff's Supplemental Exhibit A-1.

(The paper referred to was filed with the stenographer and marked "Plaintiff's Supplemental Exhibit A-1, the previous paper submitted being marked "Plaintiff's Substitute Exhibit A-1.)

The Special Master: Has this been submitted to the other side for criticism as to amounts?

Mr. Anderson: Yes, sir.

The Special Master: Then I would like to inquire whether the amounts stated in the computation—and this without reference to the propriety or impropriety of their charge—are cor- 835
rectly stated as to amounts.

Mr. Dixey: I think so, yes.

The Special Master: So that, so far as the computations are concerned, in Plaintiff's Supplemental Exhibit A-1, both parties agree that they are correctly stated? They disagree as to whether or not they should be included in the public debt, but they agree that they are correctly stated?

Mr. Anderson: Yes, sir.

Mr. Dixey: I think so.

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The Special Master: To see whether we can make any more progress now, without wating for the reports from the experts, I will inquire whether either party has any evidence it wants to submit on this item of $65,000? 868

Mr. Carlisle: I think, so far as I know, there is no oral evidence that has been offered about it.

Special Master: Is that your understanding, Brother Anderson?

Mr. Anderson: No, sir, no new evidence. We rely on the statute entirely.

The Special Master: As to the item at $65,000 in the Literary Fund, that is it, is it? 869

Mr. Anderson: Yes, sir—

The Special Master (continuing): Neither party has any additional evidence to submit, both conceding that the rights of the parties are to be determined by the proper legal construction of the statutes involved. Is that right?

Mr. Carlisle: There are several statutes. Yes, sir.

Mr. Harrison: Now, will you get back before you leave the schedules, to Supplemental Schedule A-1?

[*Vol. 7, July 1, 1909.*] 873

The Special Master: In order to get along as far as possible, suppose we take up the paragraphs in their order. Now, as to Paragraph 1, does either side desire to submit anything in addition to the evidence already in, relating to the three items mentioned in the schedule, relating to "Held by the Literary Fund, $1,150,067.33;" "held by the Sinking Fund, $1,329,557.20;" and "held by Board of Public Works, $146,500?" Does either side desire to submit any evidence bearing upon those three propositions under that paragraph, or have you everything in that you want to put in on that?

Mr. Anderson: Virginia does not desire to submit anything.

The Special Master: How about West Virginia?

Mr. Conley: West Virginia does not desire to submit anything.

Mr. Anderson: Except, of course, it is understood that counsel will file a schedule reciting the different acts.

Mr. Carlisle: The acts under which the Literary Fund and the other fund held these bonds?

Mr. Anderson: Yes, sir. 874

The Special Master: Then it is understood that so far as the plaintiff Substitute Schedule A-1 is concerned, the case is closed. Is that agreed to?

Mr. Anderson: Yes, sir.

The Special Master: Now, we have here Plaintiff's Supplemental Exhibit A-1, headed "Public debt of Virginia; undetermined contingent liability." Does either side desire to submit any evidence in relation to that schedule?

Mr. Harrison: We do not.

Mr. Anderson: Except Mr. Potter is prepared to testify as to the accuracy of the figures.

The Special Master: That is agreed to. The accuracy of the figures is agreed to. Has West Virginia anything to submit as to schedule?

Mr. Carlisle: No, sir.

The Special Master: Then, as to Plaintiff's Supplemental Exhibit A-1, the case is closed.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Presented by

WEST WATERHOUSE & COMPANY
Chartered Accountants
44 William Street, New York
For the Plaintiff

THOMAS ZERO DIXEY
Certified Public Accountant
30 Liberal Street, New York
For the Defendant

B-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT B-1.

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:		
Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

Estimated—With Slaves:		
Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%
Estimated—Without Slaves:		
Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph II of the Decree.

[See reference to Area contained in testimony of A. G. Potter under Paragraph 7, page —— of this volume, indented pages 80 and 81.]

[*Vol. 2, February 15, 1909. in Relation to Area.*]

The Special Master: Does any one else desire to be heard on the part of Virginia?

Mr. Anderson: If your Honor please, I can not, perhaps, add anything to the contention that has been made on the part of Virginia in opposition to the application for a continuance. That has already been exhaustively made by my associates. I wish, however, to refer to two matters, which will only occupy a few minutes. One is the statement of Senator Spooner, upon which he based one of his arguments for a continuance, as to any possible objection in this case about the territorial area of the Commonwealth of Virginia and of the State of West Virginia. A report was filed here with reference to the area, which I had not had an opportunity to examine, and which it was finally admitted at the former hearing was a fictitious area. I stated then that we did not rely upon it, and that there would be no controversy upon that question.

I wish now, in furtherance of the suggestion then made, to say to my friend, that Virginia is willing to accept the area furnished by the Department of the United States Government, either the Geological Survey or the Census Bureau.

The Special Master: The Geological Survey would be the 170
natural survey.

Mr. Anderson: The Geological Survey gives, as the area of Virginia, 40,262 square miles, and West Virginia, 24,022 square miles of land, and it is the land only that is assessed.

Mr. Carlisle: That gives both the water and the land?

Mr. Anderson: The water and land, both.

Mr. Carlisle: We think the water and land surface both ought to be included because the water surface is very valuable. Hampton Roads, the big James River and the other navigable streams are very valuable to the State.

The Special Master: You say these figures do include both water and land?

Mr. Carlisle: Yes; so much land and so much water. We want them both.

Mr. Conrad: It says, "the assessed value."

Mr. Anderson: The direction of the decree was that the assessed value should be ascertained, and the area of the territory. I take it it is immaterial whether the area is 40,000 square miles or 42,000 square miles, because I take it there will never be any ascertainment of this debt on the basis of area. It will be on the basis of values.

The Special Master: It is not immaterial to me, because that is one of the things I have got to find—the extent. Let us see right here if we are ready to agree. If you have the figures of both water and land—

Mr. Anderson: We have them both here. 171

The Special Master: If you have them both here and you agree on this public document as being the accurate result, why can we not put right into the record that it is now agreed between both parties that the area is as follows: then give the land area and the water area of Virginia and the same of West Virginia? Those facts then would be eliminated from controversy. That is the extent, and what may be predicated upon land and water, or upon land or water, is a matter to be determined hereafter; but we can get that fact out of the way if you both agree to it.

Mr. Carlisle: Their accountant has stated what he said was the area for a purpose, of course.

The Special Master: If the extent, which of course means area, can go into the record as agreed upon, that eliminates that fact from controversy.

Mr. Anderson: We are willing to agree that the area given at page 8 of Bulletin No. 302, Series F Geography, 53, United States Geological Survey of 1906, is an accurate statement of the area of the two States.

The Special Master: Will you pass that to me?

Mr. Anderson: Yes, sir. Now, we do not concede the water area has anything to do with this question.

Mr. Carlisle: There is no concession about it. You simply state the facts. There is no concession as to what the effect will be.

The Special Master: As long as we are here upon this, I will get this out of the way, Mr. Attorney General. Let me see if I state this so that both parties understand it.

It is agreed, under item 2 of the order, that the extent of Virginia is, land surface, 40,262 square miles; water surface, 2,365 square miles; total area, 42,627 square miles.

Of West Virginia, land surface, 24,022 square miles; water surface, 148 square miles; total area 24,170 square miles. Those are the figures shown by this official report. Are those figures agreed to as being the extent?

Mr. Carlisle: Yes, sir. 172

Mr. Anderson: Yes, sir.

The Special Master: That eliminates the matter of extent from controversy.

Mr. Anderson: We do not agree, on behalf of Virginia, that the water area should be taken into account.

The Special Master: The facts are stated. You will get the benefit of your legal proposition, whatever it may be. Of course that enables me to state very concretely what the facts are. Then what construction may be placed upon those facts is a matter for argument later.

[*Vol. 4. May 5th, 1909.*] 2751/2

[*Cross Examination of Arthur G. Potter on Plaintiff's Exhibit B-1.*]

[By Mr. Carlisle]:

The next clause of the decree is to ascertain the extent and assessed valuation of the territory of Virginia and West Virginia June 30. 1863, and the population thereof, with and without slaves, separately.

Mr. McClintic: In Exhibit B-1, responsive to item 2 of the decreee, you set out the area of Virginia as 48,951 square miles and the area of West Virginia as 45,537 square miles. Do you wish to let that stand as such or do you wish to correct it?

Mr. Harrison: It has already been corrected.

The Witness: I understood that the matter had been adjusted at the previous hearing.

The Special Master: All that relating to that subject matter would practically amount to nothing now because there is an agreement:

although of course it is a proper subject for cross examination. There was a stipulation at the last hearing. Of course it is still open, if you desire to pursue it on cross examination.

Mr. McClintic: I just wanted to ask one question to straighten it out.

The Special Master: Unless there is some real occasion for 276
it, I would not spend any time on it.

Value and population are other elements involved in paragraph 2, population with and without slaves.

By Mr. Carlisle:

Q. You have given the population of these two States, that is the population of what now constitutes Virginia and the population of what now constitutes West Virginia in 1860. Did you get it from the Census.

A. From the volume of the 9th Census of the United States, pages 68 to 72.

Q. And then you add 2.47 for an increase from 1860 to 1863?

A. Not 2.47 per cent, 2.47. In other words, 171 days.

The Special Master: Based on the preceding decade?

The Witness: Yes, sir.

By Mr. Carlisle:

Q. The Census day, under the law was June 1st of each ten years. Did you take that as the date from which you made your calculation of the increase?

A. I stated January 1st, 1861, to June 20th, 1863.

Q. You got the enumeration of the slaves and the enumeration of free persons of color in the same way, did you from the Census?

A. Yes, sir.

Q. You took the Census of 1860 and then you made an ad- 277
dition to it to ascertain the population in June, 1863?

A. Yes, sir.

Q. What method did you adopt to ascertain that fact?

The Special Master: That is, how did you get at your proportion?

A. I took the increase between 1860 and 1870 and applied the ratio to the population of the two States.

By Mr. Carlisle:

. You went back to the previous decennial period and got the average increase?

A. I got the average yearly increase.

Q. The average annual increase?

A. Yes, sir.

Q. And then you took the item that you did take here and applied that to it?

A. Yes.

The Special Master: What did you find the percentage of increase to be for the preceding decade?

The Witness: I had not figured on percentage. I have 20,000 whites, for instance, the increase in Virginia; and one-tenth of that would be 2,000. That is the way in which I arrived at the annual increase.

The Special Master: You did not take the percentage of increase for the decade, you took the concrete figures?

The Witness: I took the concrete figures.

By Mr. Carlisle:

Q. The decree says you shall ascertain this population with and without slaves. When you undertook to exclude slaves have you not omitted all free persons of color in the State of Virginia? 278

(Consultation between Mr. Carlisle and his associates followed)

By Mr. Carlisle:

Q. I will ask you this question. You find that there were in 1870, which was after this period, 512,841 free persons of color in Virginia—

Mr. Conrad: Free persons of color?

Mr. Carlisle: Colored persons. Of course they were free in 1870. They were put down separately in 1860 as free persons of color.

Q. (Continuing) Did you not assume then, when you wanted to ascertain your final result, that there would have been, if slavery had not been abolished, 512,841 slaves in the State; is not that what you assumed?

A. I have not got your question straight.

Mr. Harrison: That is on page 11?

Mr. Carlisle: It is marked page 10 here.

Mr. Anderson: Page 11 of Exhibit B-1.

Mr. Robinson: The first two pages will explain how we got at that. You mean at the bottom of page one?

Mr. Carlisle: I will ask the stenographer to read the question.

The stenographer read as follows:

"Q. You find that there were in 1870, which was after this period, 512,841 free persons of color in Virginia. They were of course free in 1870. They were put down separately in 1860, as free persons of color. Did you not assume then, when you wanted to ascertain your final result, that there would have been, if 279

slavery had not been abolished, 512,841 slaves in the State. Is not that what you assumed?"

A. I understand that they were put down as free persons of color in 1870.

By. Mr. Carlisle:

Q. Did you find that in the Census?

A. Virginia's total negro population in 1870 was 512,840.

Q. I did not ask you whether they were put down as slaves in 1860. That was simply my statement. What I want to get at is, how did you get at these figures as representing the free colored people in Virginia in 1870—512,841?

The Special Master: That is, how did he reach that result; where did he get that item?

Mr. Carlisle: Yes.

A. I took it from the Census, the 9th Census of the United States.

By Mr. Carlisle:

Q. That is, the Census of 1870?

A. Yes, sir.

Q. Well, then, did you not assume that a certain number of them were slaves in 1860 or 1863? You were to give that with slaves and without slaves. I want to know how you got it?

The Special Master: How did you fix the number of slaves in 1863; just give the method of computation. 280

Mr. Carlisle: That is what I want.

The Special Master: He wants to know how you arrive at your result as to the slaves in 1863, on June 20th. Begin at the foundation and give us your computation. Give us the figures.

The Witness: The number of slaves in 1863?

The Special Master: How did you ascertain the number of slaves June 21, 1863. Give us the method you employed by which you reached the result in your statement?

The Witness: I first established the percentage of slaves and free negroes in 1860 in Virginia and West Virginia. Then I determined the free negro population in 1870.

The Special Master: What figures did you have to start with? You first ascertained the number of slaves in Virginia and West Virginia in 1860. What are those figures? That is what you want, is it not, Brother Carlisle?

Mr. Carlisle: Yes; the detailed steps.

The Special Master: Give us your figures, the detailed computation and the results.

The Witness: Virginia, 1860—472,494 slaves; 55,269 free negroes. West Virginia, 1860: 18,371 slaves; 2,773 free negroes. With that as a basis, I worked out the percentage shown on the schedule, which

was 89.53 per cent. of slaves for Virginia and 10.47 per cent. free negroes.

West Virginia, 86.89 per cent. slaves; 13.11 per cent. free negroes.

By the Special Master: 281

Q. That gave you the proportion of free and slaves, the preportion they bore to each other at that time?

A. Yes, sir.

Q. What was your next step?

A. I took the free negroe population of the two States in 1870, which was 512,841 in Virginia and 17,980 in West Virginia.

Q. Please state that again?

A. Virginia's negro population in 1870 was 512,841, of which 10.47 per cent., or 53,694, would be free negroes if slavery had existed at that time. On the same basis there would have been 2,357 free negroes in West Virginia in 1870, if slavery had existed. I took the total white population, which in 1870 was 712,322, and added to that the percentage of free negroes, determined by the method just mentioned, namely, 53,694, making a total of 766,016 total free population of Virginia. The total white population of West Virginia in 1870 was 424,034, to which I added the number of free negroes, determined by the method just described, 2,357, making a total of 426,391, as the probable total population in 1870. Comparing these two figures, I get the ten years increase at 18,880 in Virginia; and the increase in West Virginia, 68,074; to which I add 2.47.

Q. To what—to the population in 1860?

A. The population of 1860, to determine the population in 1863; making a total of 751,799 in Virginia, and 375,131 in West Virginia.

By Mr. Carlisle: 282

Q. Is that all?

A. That is assuming that the United States Census was made as of December 31, 1860, at the end of the year, taking in the year.

Q. If the United States Census was taken on the 1st of June, as of the 1st of June, 1860, you omitted, when you made the calculation, seven months and ten days, did you not?

A. If it was so taken.

Q. Would not that make a very great difference in the percentage?

A. It would make a very slight difference.

Q. A very slight difference? Would not one per cent. of 400,000 be much more than on 24,000?

A. Yes, sir.

Q. And when it came to make the percentage, would it not make quite a difference, the difference in percentage on a large amount and the percentage on a small amount?

A. Undoubtedly.

Q. Then, if you had taken the Census as of June 1st, 1861, the

population in the State of Virginia would have been much larger than you have shown it, would it not—because you would have to add an increase for a longer time?

A. I don't understand your question.

Q. In other words, have you not omitted from the time during which you have calculated the increase, seven months and some days?

A. If the Census was taken June 1st, I have omitted seven months, yes. 283

Q. If you had added the increase of Virginia's slave population for the seven months, that would have made it considerably larger, would it not?

A. Not necessarily. I cannot tell without figuring out. But West Virginia's proportion might have increased in the same ratio and would not have changed the result.

Mr. Conrad: Did not West Virginia's population increase in a far greater ratio?

Mr. Carlisle: I am examining the witness about it.

By Mr. Carlisle:

Q. If nine years had expired after the Census of 1860, would not the result have been very different if only one year had expired?

A. It would.

Q. The same thing applies, in less degree, does it not to seven months?

The Special Master: On how long a period of time is your percentage of 2.7 predicated?

Mr. Carlisle: The first of January, 1861, to the 20th of June, 1863.

The Witness: Yes.

The Special Master: That is two years—

The Witness: And 171 days.

The Special Master: And if there ought to have been seven months more added, you would have had that much longer time, and the results in which case would have been increased by the amount of the increased percentage.

The Witness: It would have been three years instead what of it was. 284

Mr. Carlisle: It would have been three years and twenty-three days.

Mr. Conrad: But the ratio the same.

Mr. Carlisle: But the interest on one dollar is not as much as the interest on $100 for the same length of time.

The Special Master: That is obvious.

Now, it is understood that the Census was actually taken in June, 1860?

Mr. Carlisle: That is the law.

Mr. Anderson: That is the theory.

The Special Master: Well, as far as we know, then, the United States Census is predicated, as to the population in existence, on the first of June?

Mr. Anderson: Although as a matter of fact the count is made after that.

The Special Master: But the work is supposed to have been done as of that date. Is that the understanding?

Mr. Robinson: Of course our schedule shows, too, that West Virginia was increasing very much more rapidly than Virginia.

The Special Master: That does not affect this proposition at all. What we want to know now is whether we have a common starting point. Is it agreed that the census was taken as of the first of June, 1860?

Mr. Carlisle: All the statistics of the Census.

The Special Master: But what I want to know is whether both sides agree to that.

Mr. Carlisle: That is what the Act says.

Mr. Conrad: But the Act says a great many things not in 285
accordance with the fact.

The Special Master: Then, if you do not agree we understand where we are. If you did agree all the accountant would have to do would be to rearrange his figures; but in the absence of agreeing, the defendants may proceed upon their theory and later I will hear the plaintiffs on their theory.

Mr. Carlisle: If you want a reference to the Act, I will give it to you.

Mr. Conrad: No. The reports furnished us agree substantially with ours.

The Special Master: As we go along, where the difference is so small that Virginia does not think it worth while to contest, I will have the record show that, and we will thereby make progress. When we reach that stage I will see to it that the record shows an agreement upon such items as may be involved in that suggestion.

Mr. Anderson: You would probably not care to press this further if you knew the result?

Mr. Carlisle: I do not know the exact result, but it would make some difference.

Mr. Anderson: Have you made an estimate as to what the result would be, what difference between our percentage and yours if this change was made?

The Witness: Yes, sir.

Mr. Carlisle: The only significance of this inquiry is that one of the alternative methods of ascertaining West Virginia's just
proportion of the ordinary expenses of government is based 286
on the population, and the other is based on the assessed val-

ue of property. Now, West Virginia is charged with a certain percentage, and a difference between the population, in the other method, and it might be important—

Mr. Anderson: Mr. Potter has looked into that and he has made a calculation as to what the difference would be in the two methods, and I think it would save time to ask him about it. We really do not care which you adopt.

The Special Master: If you do not care which is adopted, can we not have that stated in the record, and that will eliminate this controversy?

Mr. Carlisle: No; we could not; because we do not know just now the exact method he adopted.

The Special Master: We will not be able to make any progress in that direction just now, then. If they have no objection, the Attorney General wants to ask a witness what the result would be upon the theory that you suggest?

Mr. Carlisle: We have no objection.

The Special Master: Otherwise of course you could complete your cross examination and he could take up the matter upon redirect. You may ask that question, Mr. Attorney General.

Mr. Spooner: I would like to have the theory stated first.

Mr. Anderson: The theory has been stated by Mr. Carlisle.

The Special Master: Assuming that the computation of 287
population was to go back to June 1st, 1860, instead of December 1st, 1860, it is upon that hypothesis that Mr. Anderson wants the witness to state how it would affect the result.

Mr. Carlisle: That is purely a method of calculation.

The Special Master: That may be true; but he desires to ask him that question, and unless there is objection he may ask him.

Mr. Carlisle: I don't care; let him guess at it. That is all he can do.

Mr. Anderson: I want it to show that my friend is wasting some very heavy artillery on some very small sparrows.

The Witness: I have made a calculation on the basis of West Virginia figures. We assume she started that day. The difference in the population, taking slaves, is .1745 of one per cent., or, practically 17-100ths of one per cent. And the case of Virginia is the same.

Mr. Carlisle: That could not be so, applying the same method to a smaller number, when you compare the two things. When you compare the difference in the percentage, you have put down the percentage shown on your theory now.

The Witness: The difference between your per cent. and our per cent. shown by the schedules is as I have stated, a little over 17-100ths of one per cent.; and figuring it without slaves there is a difference of a little over .23 of one per cent.

Mr. Carlisle: We are not excluding slaves at all in the question put to you; we are including them.

[*Vol. 5, May 6, 1909.*]

[*Direct Examination of Thomas B. Dixcy on Defendant's Exhibit B-1.*]

[The Special Master:] 510

As I understand, defendant's exhibit B-1 is now produced.

Mr. McClintic: Please look at this and see if you identify it.

The Witness: I do identify it as having been made and signed by me.

(The paper referred to was marked by the stenographer Defendant's Exhibit B-1.)

Mr. McClintic: West Virginia offers Defendant's Exhibit B-1 as evidence.

By Mr. McClintic:

Q. Please state, Mr. Dixcy, if you made this, or if it was made under your direction (referring to Defendant's Exhibit B-1.)

A. It was made in part by me, yes, and under my direction. That is the original figures. The report itself was made by 511 me.

Q. Please state to the court what it contains, in a general way.

A. It contains four schedules, four statements, the first showing the area of Virginia and West Virginia separately, second, showing the assessed valuation of the real property in Virginia; third, showing the assessed valuation of the real property in West Virginia; fourth, the population of Virginia and West Virginia, with and without slaves separately, computed as of June 1st, 1863; and the average of such population by decades from 1820 to 1860, both dates inclusive.

Q. Are those amounts stated in there under those four schedules correct?

A. They are correct, sir, from the sources of information as noted.

Q. I find on page 6, included certain items as to the censuses of 1820, 1830, 1840, 1850, and 1860. Are those correct, from the sources from which you obtained them?

A. They are.

Q. What sources?

A. They were furnished by S. N. D. North, the Director of the United States Census Bureau, in a letter over his signature.

Q. Does that letter accompany this exhibit?

A. The letter including that schedule, no.

Q. Please explain how you arrived at the other census figures on that page?

A. The table to the top of the page, headed "With Slaves and Without Slaves" were furnished by the United States Census Bureau, so far as relates to the first and third columns. The 512
fourth column and the percentages were computed by me using the basis of computation used by the Census Bureau of the United States in their computation of June 1st, 1863.

Q. You took the date June 1st, 1860, and computed the additional amount from that date?

A. From that date.

Q. Why did you take the date, June 1st, 1860?

A. Because it is the date given in the laws of the United States for the taking of the United States Census.

Q. The valuation of the real estate of Virginia was taken from what sources?

A. As to Alexandria, from the Auditor's report for 1860, and thereafter from the sources noted at the head of each group of county names; the following group from the report of 1861, and then from the land books of 1861, 1862, and 1863, the Virginia counties being taken, almost altogether or very largely, from the land books of 1863.

Q. In those counties which were not taken from the land books of 1863, did you take them from the best and nearest sources available?

A. The nearest source available to that date.

By the Special Master:

Q. What are these land books?

A. They are assessment rolls.

Q. Where did you find them?

A. Down here in the basement of the State Library Building.

Q. For all the counties of Virginia?

A. No; some of them were missing, but most of them were 513
here.

Q. Is that the rule, that all the assessments made throughout the State are made here?

Mr. Anderson: Yes, sir.

Mr. Conrad: Three copies are made. One is sent here.

The Special Master: And this was the duplicate sent here that you had access to?

The Witness: Yes, sir. The series is not unbroken, but approximately so.

The Special Master: And when you did not get the exact date, you got the nearest approximation you could?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Please state what facts bear on the assessment of West Virginia as to the best source of information?

A. They were the same as those in regard to the other counties of Virginia.

[*Vol. 6. May 7, 1909.*]

[*Cross-Examination of Thomas B. Dixey on Defendant's Exhibit B-1.*]

612

By Mr. Harrison:

Q. Now, I will pass to another subject. In the second item of the second paragraph of the decree, the inquiry was directed to the extent and assessed valuation of the territory of Virginia and West Virginia on June 20, 1863. That is part of the inquiry embraced in the second paragraph, the extent of assessed valuation of the territory. Is there any difference between your statement and Mr. Potter's statment as to the extent of the territory of the two Virginias?

Mr. McClintic: That was agreed on once.

Mr. Harrison: I understand that, but I want to get it in the record.

A. A very material difference.

By Mr. Harrison:

Q. There is, you say, a very material difference?

A. As to the extent of the territory, as we show it and as you show it; yes, there is a very material difference.

The Special Master: You mean a difference in the area?

The Witness: I am quite sure.

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The Special Master: Be sure that you understand the question.

Mr. Conrad: He testified that there was a very material difference.

Mr. Harrison: Yes, between his statement and Mr. Potter's statement as to the area.

Do you understand the question?

613

The Witness: I am not sure that I do.

By Mr. Harrison:

Q. You understand that Mr. Potter's statement, as originally presented here, more than six months ago, was to be modified, that it was understood it was to be modified and treated as modified in respect to the extent of territory; do you not?

A. I understood that counsel had agreed that the United States

Geological Survey reports or surveys should be accepted.

Q. Then, when I refer to Mr. Potter's statement, I of course refer to it as modified according to the agreement.

A. I had not understood that Mr. Potter's original statement was withdrawn.

Mr. McClintic: He never filed any subsequent statement.

The Witness: Of course if his figures are the same as mine, taken from the same source, although I have never seen any statement prepared by Mr. Potter, I assume the areas would be the same.

The Special Master: Strictly speaking, of course Mr. Potter 614
has not changed his statement, but as a matter of fact, that 614
has been agreed upon, the areas have been agreed upon.

Mr. Harrison: You so understood it?

The Special Master: Yes. I thought the correction had been made.

Mr. McClintic: I never saw the change, if it was made.

Mr. Harrison: I was treating it as if it had been done. It was agreed that it should be done.

The Special Master: That is evidently the way the misapprehension arose.

Mr. Anderson: There is no doubt about it, that that was agreed upon, and there is no difference between us on that point.

By Mr. Harrison:

Q. As to the assessed valuation of the territory, is there any difference between your statement and Mr. Potter's statement?

A. As to the assessed valuation of the territory?

Q. Yes.

A. Yes; there is a small difference in each State.

The Special Master: How much?

The Witness: No. 2 is what I want (referring to exhibit).

The Special Master: Do you want your schedule, your second schedule?

The Witness: No; I want the plaintiff's exhibit. 615

The Special Master: Then it is Plaintiff's Exhibit B-1 that you want?

The Witness: (Referring to Exhibit) There is a difference to this extent. Virginia's Exhibit as to the assessed valuation of Virginia is less than ours by the sum of $129,424.36.

By the Special Master:

Q. What is the cause of that discrepancy?

A. It is difficult to reconcile the sums, because these were copied right out of the books in most cases, and sometimes, where Mr. Potter's figures did not agree with ours, we went back and reckoned, and they made clerical differences.

Q. Can you confine the difference to some particular item?

A. No; it varies from two and three cents to different amounts.

Q. Which is the largest?

A. Well, none of the differences are very much.

By Mr. Harrison:

Q. You have given the difference on the Virginia assessment?

A. Yes, sir.

Q. What is the difference on the West Virginia assessment?

A. It is quite small. The Virginia schedule showed the West Virginia assessment to be $6,352.90 less than the West Virginia schedule showed it to be. 616

Q. Then, if you deduct this $6,352.90 from $129.424.36 you will get $123,071.46 as the real difference?

A. No, sir; I should add the two items together.

Q. Why would you do that?

A. Because they are both against West Virginia. In one case Virginia is understated by Virginia's schedule—

Q. By how much?

A. $129,000.

Q. In round numbers, or that much accurately?

A. The figures are $129,424.30.

Mr. Anderson: If I was in error about that I want you to correct me.

The Special Master: Virginia is understated and West Virginia is overstated?

The Witness: By Virginia, yes sir.

Mr. Harrison: And it would be how much?

The Special Master: $6,352. Give me the exact amount, please.

The Witness: $6,352.90.

The Special Master: What do you gentlemen want to do about that discrepancy? I cannot take the time to examine all these details for you, and I should think the experts ought to get together on that. They ought to go over it and find that discrepancy, I should think.

Mr. Harrison: That is why we are developing these discrepancies.

The Special Master: Certainly. That is perfectly proper. I cannot take time for cross-examination on those details. 617 They must reconcile the two sides, or you must agree, one of two things; either you will agree among yourselves or the experts will get together and agree; then if they cannot agree on some particular instance, if they will submit it to me, I will have to determine it.

By Mr. Harrison:

Q. The second inquiry under the second paragraph of the decree relating to the population of the two Virginias, with and without slaves, separately. Will you please state to what extent your statement of that inquiry differs from Mr. Potter's statement of that?

A. In amount?

Q. Yes. That is what we are getting at.

A. Do you want it with or without slaves?

Q. I want it both ways.

The Special Master: What is this question?

Mr. Harrison: I ask him to state to what extent his statement of the population of the two Virginias differs from Mr. Potter's statement, showing it respectively with and without slaves.

The Special Master: Whether there was any discrepancy there, and if so, how much.

The Witness: Suppose I prepare that during the recess. It will only take a few minutes.

The Special Master: And it will be understood also in reference to that that if there is any discrepancy the accountants can get together, and see if they can reconcile it, and if they do not reconcile it, all they will do then will be to report to me and I will have to decide upon it. 618

[*May 7, 1909.*]

After Recess.

619

THOMAS BIRD DIXCY

resumed the stand for further cross examination.

By Mr. Harrison:

Q. Can you state now specifically the difference, if any there be, between your statement and Mr. Potter's, under paragraph 2 of the decree, of the population with and without slaves in the two Virginias?

A. For Virginia, as computed in the Virginia exhibit, with slaves, 1,220,997; in accordance with West Virginia's Exhibit, 1,221,319, an excess on the Virginia Exhibit of 322.

Q. In other words, Virginia is 322 in excess of the total population over West Virginia's schedule.

A. With slaves.

Q. Now take it without slaves.

A. Without slaves, as computed for Virginia, on Virginia's Exhibit, 751,799. As computed for Virginia on the West Virginia Exhibit, 748,171, an excess on the Virginia exhibit of 3,628.

Q. So that in each case, with slaves and without slaves, the difference is very slight between your statement and Mr. Potter's?

A. It would be a very small percentage of the entire amount; yes sir.

The Special Master: Now, can we agree on that?

Mr. Harrison: I should think so.

The Special Master: It is a small matter.

Mr. Spooner: I do not think the Supreme Court would hear 620
four or five days of argument on that.

The Special Master: But I think it is going to be very gratifying to the court if I can eliminate all controversy that is not substantial.

Mr. Conrad: We might add the difference together, and divide it by two, and equalize them in that way. The difference *in* infinitesimal.

The Special Master: It is not a matter we will spend very much time about here.

Mr. Spooner: Or there.

Mr. Harrison: We will take their statement, if your Honor please.

The Special Master: Then the statement as to the population with and without slaves—

Mr. Harrison: Under paragraph 2 of the decree.

The Special Master: Under paragraph 2, found on defendant's Exhibit B-1, page 6, is accepted by both parties as accurate.

The Witness: I have only testified in regard to Virginia, not with regard to West Virginia yet.

Mr. Harrison: I do not know how that would be. I thought that covered both.

The Witness: No; that was as to Virginia, on the two exhibits.

The Special Master: Is the difference any greater for West Virginia?

The Witness: It would be a slightly greater percentage, yes. It is not large difference.

621

By the Special Master:

Q. What is the difference?

A. On Virginia's Exhibit, the total population of West Virginia, with slaves, is 392,823.

Q. As against 396,333?

A. Yes, on West Virginia's Exhibit; an excess on the West Virginia exhibit of 3,810.

Q. That is rather in your favor than against you, is it not? That is, as far as Virginia is concerned, it increases their proportion rather than decreases it?

A. Without slaves, the population of West Virginia, as shown on the Virginia Exhibit is 375,131, and as shown on the West Virginia Exhibit, 377,289; an excess on the West Virginia exhibit of 2,158.

Q. In each case it is an excess on the part of West Virginia?

Mr. Anderson: We accept the West Virginia exhibit on both, sir.

The Special Master: Then it is agreed on the record that page 6 of the defendant's Exhibit B-1 is accepted as an accurate statement

of the population, both with and without slaves. That is agreed to on both sides.

The Witness: There is still another calculation at the bottom of page ——, an average of the population by decades from 1820 to 1860. They have not accepted that.

The Special Master: What is the significance of that? As long as we agree on the amount which I am to find, I do not know that we are concerned about the method by which the result is 622 reached.

Mr. Spooner: It bears on the expenses, possibly.

Mr. Harrison: I do not know that it has any bearing on any subsequent inquiry.

Mr. Spooner: This is in paragraph 2, as to the extent and value of the territory of Virginia and West Virginia on June 20, 1863, and the population thereof, with and without slaves, separately.

The Special Master: I shall not report any more than that.

Mr. McClintic: We shall ask to file a further statement under the *average* population of that period.

The Special Master: That is a matter I shall hear you about later. Anything either side may desire to have reported by me under my discretionary power, I will hear you both on; but for the time being it will result in less confusion if I simply confine the admissions to the paragraphs themselves. Then what I take up later will be a matter of discretion on my part.

Mr. Conrad: A question will arise under that provision of the construction of the order of the court.

The Special Master: Yes. Of course I have liberty to state any special circumstances that I consider of importance. I certainly am not going to state trivial things.

Mr. Harrison: Right here, for the purposes of paragraph 2, we will agree rather than spend any time in controversy.

The Special Master: Precisely. That covers the whole of 623 paragraph 2. If either party desires any suggestion or report or alternative in connection with paragraph 2, I will hear you on that at the close. Is that agreeable, Mr. McClintic?

Mr. McClintic: Yes, sir.

[*Vol. 7. July 1, 1909. Plaintiff's Substitute Exhibit B-1*]

Mr. Anderson: I now have in my hand schedule B-1. That has been agreed on. That was accepted at the last meet- 835 ing.

Mr. Harrison: Will you read that second paragraph of the decree?

The Special Master: The second paragraph in the decree calls for the extent and assessed valuation of the territory of Virginia and West Virginia, June 20, 1863, and the population thereof, with

and without slaves, separately. The plaintiffs submit plaintiff's Substitute Exhibit B-1. Has this been submittd to the other side?

Mr. Dixey: Yes, sir.

The Special Master: And are the computations found in Plaintiff's Substitute Exhibit B-1 agreed to?

Mr. McClintic: I understand that they agree to our statement.

The Special Master: I am merely trying to get the information. Is it a fact that you agree with the accountant on the other side as to the computations appearing in Plaintiff's Substitute Exhibit B-1.

Mr. Dixey: They agree with us, yes, sir. 836

The Special Master: It does not make any difference which way you put it.

Mr. Carlisle: I would say that the agreement is with our figures.

The Special Master: Well, have you made an agreement? Does that state it? It is absolutely immaterial, so far as the Master is concerned, how these results are reached. The question is, do we agree on that?

Mr. Carlisle: Yes sir.

The Special Master: So that the Master will report that Plaintiff's Substitute Exhibit B-1 is agreed to by both sides. That disposes of that.

[*Vol. 7. July 1, 1909.*]

[The Special Master]: We now take up revised Exhibit B-1. 874 relating to matters involved under the second paragraph in the decree.

Mr. Anderson: That is an agreed statement.

The Special Master: The case is closed as to that paragraph. Is that agreed to?

Mr. Anderson: Yes, sir.

Mr. Conley: Yes sir.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT C-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

C-1
Page 1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

SUMMARY OF PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

PARAGRAPH III OF DECREE.

Details of which are shown on pages numbered 2 to 6, inclusive, following

Total Claimed by Plaintiff:

Group I Pages 2 & 3	Bridges	$ 3,000.00	
	Railroads	1,316,992.42	
	Turnpikes	1,579,341.81	
	Miscellaneous	1,253,200.10	
			$4,152,534.33
Group II Pages 4, 5 & 6	Bridge Co's.	$ 78,412.50	
	Navigation Co's.	210,500.00	
	Turnpike Co's.	803,555.83	
	Banks	391,800.00	
	Town of Bath	2,500.00	
			1,486,768.33
			$5,639,302.66

Total Conceded by Defendant:

Group I	Bridges	$ 3,000.00	
	Turnpikes	1,149,088.92	
	Miscellaneous	99,200.00	
			1,251,288.92
	Difference		$4,388,013.74

This Difference is Composed of the Following:

Group I	Railroads	$1,316,992.42	
	Turnpikes	430,252.89	
	Miscellaneous	1,154,000.10	
		$2,901,245.41	
	and all of Group II	1,486,768.33	
			$4,388,013.74

Certified Correct as to Summary and Details.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

All Expenditures Made by the Commonwealth of Virginia Within the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Shown Inclusive.

All Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defendant.

PARAGRAPH III OF DECREE.

Group I.

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by proper charge III of D
			Basis.	Amount.	Basis.
	Bridges:				
1	Coal River Bridge	$ 3,000.00		$ 3,000.00	
	Railroads:				
2	Covington & Ohio Railroad	$2,787,128.33	Direct Construction	$1,146,460.42	
3	Winchester & Potomac Railroad Company	270,000.00	Mileage 63.16%	170,532.00	
	Total	3,057,128.33		$1,316,992.42	
	Turnpikes and Roads:				
4	Abbs Valley and Tug Road	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%
5	Alleghany Mountain Turnpike	1,074.00	" 55.55%	596.66	" 55.55%
6	Berryville and Charlestown Turnpike Company	20,455.74	" 58-1/3%	11,932.52	
7	do. Purchase of the Road in 1858	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%
8	Franklin and Monterey Turnpike	13,694.09	" 55.1%	7,545.44	" 55.1%
9	Harrisonburg to Hardy and Pendleton Co. Road	1,000.00	" 50%	500.00	" 50%
10	Kanawha Turnpike	177,054.34	Direct Construction and 82% Mileage	152,130.54	
11	do. Extraordinary Repairs (Eastern Section)	6,050.66	Mileage 42.87%	2,593.92	
12	do. do. (Western Section)	7,189.65	Direct Construction	7,189.65	
13	do. Extension	80,955.28	do.	80,955.28	
14	Kanawha River Improvements	59,572.36	do.	59,572.36	
15	Kanawha Board—Bonds	60,000.00		60,000.00	
16	North Western Turnpike	620,271.38	Direct Construction	(1) 469,148 53	Direct Construction
17	do. (Maryland Section)	7,882.92	do.	7,882.92	
18	Prices Turnpike and Cumberland Gap Road	72,780.67	do.	9,212.20	Direct Construction
19	Raleigh and Grayson Turnpike	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage
20	Staunton and Parkersburg Turnpike	388,936.97	do.	(2) 264,043.07	do.
21	South Branch of Potomac to Brocks Gap Road	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%
22	Skidmore Fork to South Fork of South Branch of Potomac Road	1,000.00	" 58.33%	583.33	" 58.33%
23	Beverly and Fairmont Road	75,384.65		75,384.65	
24	Beverly and Clarksburg Road	2,724.00		12,000.00	
	and Road from Monongalia Co. to Beverly and Clarksburg Road	9,276.00			
	Carried forward	1,656,789.68		$1,241,308.11	

NOTE. Items 10 to 14 inclusive, are included by the Defendant under Paragraph VII of the Decree.

(1) Not
(2) Not

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

Within the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Shown in Group II), from March 19th, 1823, to December 31st, 1860, Inclusive.

All Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defendant.

PARAGRAPH III OF DECREE.

Group I.

	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree. (See Note below.)	
		Basis.	Amount.	Basis.	Amount.	Basis	Amount.
.....	$ 3,000.00	.....	$ 3,000.00	.....	$ 3,000.00		
.....	$2,787,128.33	Direct Construction	$1,146,460.42	.....	.....	Direct Construction	$1,146,460.42
.....	270,000.00	Mileage 63.16%	170,532.00	.....	.....	Mileage 63.16%	170,532.00
.....	3,057,128.33	.....	$1,316,992.42	.....	.....	.....	$1,316,992.42
.....	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%	$ 4,009.45		
.....	1,074.00	" 55.55%	596.66	" 55.55%	596.66		
.....	20,455.74	" 58-1/3%	11,932.52	.....	.....	Mileage 58-1/3%	$ 11,932.52
he Road in 1858...	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%	4,221.57		
.....	13,694.09	" 55.1%	7,545.44	" 55.1%	7,545.44		
.....	1,000.00	" 50%	500.00	" 50%	500.00		
.....	177,054.34	Direct Construction and 82% Mileage	152,130.54	.....	.....	Direct Construction and 82% Mileage	152,130.54
ection).....	6,050.66	Mileage 42.87%	2,593.92	.....	.....	Mileage 42.87%	2,593.92
ection).....	7,189.65	Direct Construction	7,189.65	.....	.....	Direct Construction	7,189.65
.....	80,955.28	do.	80,955.28	.....	.....	do.	80,955.28
.....	59,572.36	do.	59,572.36	.....	.....	do.	59,572.36
.....	60,000.00		60,000.00	.....	.....	.....	60,000.00
.....	620,271.38	Direct Construction	(1) 469,148.53	Direct Construction	469,148.53		
.....	7,882.92	do.	7,882.92	.....	.....	Direct Construction	7,882.92
.....	72,780.67	do.	9,212.20	Direct Construction	9,212.20		
.....	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage	11,394.22		
.....	388,936.97	do.	(2) 264,043.07	do.	264,043.07		
.....	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%	411.80		
tomac Road.....	1,000.00	" 58.33%	583.33	" 58.33%	583.33		
.....	75,384.65	.....	75,384.65	.....	75,384.65		
.....	2,724.00	.....	12,000.00	.....	12,000.00		
urg Road.....	9,276.00						
.....	1,656,789.68	.....	$1,241,308.11	.....	$859,050.92	.....	$ 382,257.19

ndant under Paragraph VII of the Decree.

(1) Not including repairs, etc. $109,587.74
(2) Not including repairs, etc. 21,700.74

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by proper charges III of t
			Basis.	Amount.	Basis.
	Brought forward	1,656,789.68		$1,241,308.11	
	Turnpikes and Roads (Continued):				
25	Brandonville, Kingwood and Evansville Road	$ 10,595.73		10,595.73	
26	Charleston and Weston State Road	4,456.71		4,456.71	
27	Clarksburg and Point Pleasant State Road	249.00		249.00	
28	Clarksburg and Buckhannon Turnpike (Macadamizing)	19,259.36		19,259.36	
29	Cheat Mountain Turnpike	7,697.88		7,697.88	
30	Fairmont and Wheeling Road	31,848.85		31,848.85	
31	Huntersville and Lewisburg Turnpike (from Martin's Bottom to Huntersville)	19,976.47		19,976.47	
32	Huntersville and Parkersburg Road	4,000.00		4,000.00	
33	Huttonsville and Huntersville Turnpike (to Martin's Bottom)	23,168.72		23,168.72	
34	Ice's Ferry Road	1,358.00		1,358.00	
35	Kingwood and West Union Turnpike	18,140.61		18,140.61	
36	Kanawha and Logan Road $5,000.00 Logan Court House and Kanawha State Road 2,407.50 Guyandotte to Kanawha State Road 601.50	8,009.00		8,009.00	
37	Marlins Bottom and Lewisburg Road	12,615.09		12,615.09	
38	Middle Fork Road	13,867.34		13,867.34	
39	Middlebourn to Pennsylvania Road $5,653.00 and Tyler to Green County Road 1,000.00	6,653.00		6,653.00	
40	Monroe County to Kentucky Line Road	5,000.00		5,000.00	
41	Moorefield and Alleghany Turnpike Co. (Building stem to Petersburg)	4,500.00		4,500.00	
42	Morgantown and Beverly Road	2,999.97		2,999.97	
43	Nicholas Court House and Gauley Bridge Turnpike	1,500.00		1,500.00	
44	Ohio River and Maryland Road	95,934.37		95,934.37	
45	South Fork of South Branch of Potomac River to Petersburg Road	900.00		900.00	
46	Princeton and Red Sulphur Springs Turnpike	4,200.00		4,200.00	
47	Sandy River (Wayne Co.) to Kanawha Turnpike (see Wilsons Creek to Kanawha Turnpike)	3,500.00		3,500.00	
48	Slavin's Cabin and Summerville Road	16,322.30		16,322.30	
49	Sistersville and Salem Turnpike	11,326.64		11,326.64	
50	Wilsons Creek to Kanawha Turnpike (see Sandy River to Kanawha Turnpike)	4,000.00		4,000.00	
51	Wyoming Court House to Bluffs Road	5,954.66		5,954.66	
	Total	1,994,823.38		$1,579,341.81	
	Miscellaneous:				
52	Twelve Pole River Improvement	$ 1,200.00		$ 1,200.00	
53	Harpers Ferry Raid $255,745.77 Deduct—Transportation of Troops, and Ordnance and Ordnance Stores, and Sundry Credits 66,027.18	189,718.59		189,718.59	
54	School Commissioners	830,865.37	Direct Expenditure	830,865.37	
55	Surveys	250,206.56		106,416.14	
56	Trans-Alleghany Lunatic Asylum	125,000.00		125,000.00	

rge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree.	
		Basis.	Amount.	Basis.	Amount.	Basis.	Amount.
....	1,656,789.68	.....	$1,241,308.11	.....	$ 859,050.92	.....	$ 382,257.19
	$ 10,595.73	.....	10,595.73	.....	.....	.....	10,595.73
.....	4,456.71	.....	4,456.71	.....	4,456.71		
.....	249.00	.....	249.00	.....	249.00		
g)	19,259.36	.....	19,259.36	.....	.....	.....	19,259.36
.....	7,697.88	.....	7,697.88	.....	7,697.88		
.....	31,848.85	.....	31,848.85	.....	31,848.85		
Bottom to Hunters-							
.....	19,976.47	.....	19,976.47	.....	19,976.47		
.....	4,000.00	.....	4,000.00	.....	4,000.00		
Bottom)	23,168.72	.....	23,168.72	.....	23,168.72		
.....	1,358.00	.....	1,358.00	.....	1,358.00		
.....	18,140.61	.....	18,140.61	.....	.....	.....	18,140.61
..... $5,000.00							
..... 2,407.50							
..... 601.50	8,009.00	.....	8,009.00	.....	8,009.00		
.....	12,615.09	.....	12,615.09	.....	12,615.09		
.....	13,867.34	.....	13,867.34	.....	13,867.34		
..... $5,653.00							
..... 1,000.00	6,653.00	.....	6,653.00	.....	6,653.00		
.....	5,000.00	.....	5,000.00	.....	5,000.00		
m to Petersburg) ..	4,500.00	.....	4,500.00	.....	4,500.00		
.....	2,999.97	.....	2,999.97	.....	2,999.97		
.....	1,500.00	.....	1,500.06	.....	1,500.00		
.....	95,934.37	.....	95,934.37	.....	95,934.37		
ersburg Road.....	900.00	.....	900.00	.....	900.00		
.....	4,200.00	.....	4,200.00	.....	4,200.00		
e Wilsons Creek to							
.....	3,500.00	.....	3,500.00	.....	3,500.00		
.....	16,322.30	.....	16,322.30	.....	16,322.30		
.....	11,326.64	.....	11,326.64	.....	11,326.64		
River to Kanawha							
.....	4,000.00	.....	4,000.00	.....	4,000.00		
.....	5,954.66	.....	5,954.66	.....	5,954.66		
.....	1,994,823.38	.....	$1,579,341.81	.....	$1,149,088.92	.....	$ 430,252.89
					$ 1,200.00		
.....	$ 1,200.00	.....	$ 1,200.00	.....			
..... $255,745.77							
d Ord-							
..... 66,027.18	189,718.59	.....	189,718.59	.....	.....	.....	$ 189,718.59
.....	830,865.37	Direct Expenditure	830,865.37	.....	.....	.....	$30,865.37
.....	250,206.56	.....	106,416.14	.....	.....	Direct Expenditure, Mileage and Percentage	106,416.14
	[illegible]	.....	[illegible]	.....	98,000.00	.....	27,000.00

(Group II.) Disbursements made by the Commonwealth of Virginia in payment of subscriptions to the capital stock of joint stock companies and corporations, including banks, created by her, the property or works whereof were situated in whole or in part in the territory now constituting the State of West Virginia, and a loan to the Town of Bath in said territory; all claimed by Virginia under Paragraph II of the decree. The plaintiff and defendant agree to the correctness of the amounts of said disbursements and to the portion of the property situated in West Virginia, as set forth in this table; but the defendant denies that they are a proper charge against her under this paragraph, and denies that some of the items are a proper charge against her in any event, and claims that, so far as she is liable at all, she is liable under Paragraph VII of the decree.

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Bridge Companies:			
57	Buckhannon Bridge Company	$ 1,800.00		$ 1,800.00
58	Cheat River Toll Bridge Company	4,612.50		4,612.50
59	Elk River Bridge Company	6,000.00		6,000.00
60	Fairmont and Palatine Bridge Company	12,000.00		12,000.00
61	Guyandotte Bridge Company	12,000.00		12,000.00
62	Morgantown Bridge Company	24,800.00		24,800.00
63	North Branch Bridge Company	3,000.00		3,000.00
64	South Branch Bridge Company	4,200.00		4,200.00
65	Virginia and Maryland Bridge Company	10,000.00		10,000.00
	Total	$ 78,412.50		$ 78,412.50
	Navigation Companies:			
66	Coal River Navigation Company	$ 96,000.00		$ 96,000.00
67	Guyandotte Navigation Company	106,800.00		106,800.00
68	Monongalia Navigation Company	2,660.00		2,660.00
69	Tug Fork Navigation Company	5,040.00		5,040.00
	Total	$210,500.00		$210,500.00
	Turnpike Companies:			
			Mileage.	
70	Berkeley and Hampshire Turnpike Company	$ 16,572.00	92.46%	$ 15,322.47
71	Cross Roads and Summit Point Turnpike Company	6,000.00	46.38%	2,782.80
72	Giles, Fayette and Kanawha Turnpike Company	44,991.60	97.62%	43,920.80
73	Hardy and Winchester Turnpike Company	23,400.00	67.21%	15,727.14
74	Huntersville and Warm Springs Turnpike Company	6,159.24	21.36%	1,315.61
75	Hillsboro and Harpers Ferry Turnpike Company	6,000.00	2.38%	142.80
76	Martinsburg and Winchester Turnpike Company	27,000.00	59.09%	15,954.30
77	Morgan and Frederick Turnpike Company	8,005.00	73 1-3%	5,870.33
78	Mountain Lake and Salt Sulphur Springs Turnpike Co.	4,800.00	16.2-3%	800.00
79	North Frederick Turnpike Company	11,325.00	11.68%	1,322.76
80	Raleigh and Wythe Line Turnpike Company	400.00	73 1-3%	293.33
81	Brandonville, Kingwood and Evansville Road Company	3,193.46		3,193.46
82	Buckhannon and Little Kanawha Turnpike Company	7,773.00		7,773.00
83	Charleston and Point Pleasant Turnpike Company	31,260.00		31,260.00
84	Charleston, Ripley and Ravenswood Turnpike Company	27,519.41		27,519.41
85	Clarksburg and Philippi Turnpike Company	5,446.25		5,446.25
86	Clarksburg and Wheeling Turnpike Company	4,195.35		4,195.35
87	Clarksburg and Buckhannon Turnpike Co.	9,255.13		9,255.13
88	Cacapon and North Branch Turnpike Company	12,000.00		12,000.00
89	Clear Fork Road Company	600.00		600.00
	Carried forward,	$255,895.44		$204,694.94

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$255,895.44		$204,694.94
	Turnpike Companies (Continued):			
90	Cranberry Summit and Brandonville Turnpike Company.	4,120.11		4,120.11
91	Dunkard Creek Turnpike Company	6,000.00		6,000.00
92	East River and Princeton Turnpike Company	4,800.00		4,800.00
93	Fish Creek Turnpike Company	6,000.00		6,000.00
94	Franklin and Circleville Turnpike Company	2,175.00		2,175.00
95	Gilmer and Braxton Turnpike Company	6,699.80		6,699.80
96	Gilmer, Ripley and Ohio Turnpike Company	29,974.80		29,974.80
97	Gnatty Creek and West Union Turnpike Company	5,700.55		5,700.55
98	Grave Creek and Pennsylvania Line Turnpike Company.	1,800.00		1,800.00
99	Hampshire and Morgan Turnpike Company	6,510.00		6,510.00
100	Hardy and Randolph Turnpike Company	7,134.78		7,134.78
101	Harrisville Turnpike Company	6,000.00		6,000.00
102	Hedgesville and Potomac Turnpike Company	5,400.00		5,400.00
103	Holliday Cove Turnpike Company	4,733.33		4,733.33
103A	Holliday Cove and Wellsburg Turnpike Company	5,916.67		5,916.67
104	Holliday Cove and New Cumberland Turnpike Company.	2,400.00		2,400.00
105	Kingwood and West Union Turnpike Company	8,769.48		8,769.48
106	Leading Creek and Buffalo Creek Turnpike Company	5,847.84		5,847.84
107	Letart Falls and West Columbia Turnpike Company	2,350.00		2,350.00
108	Lewisburg and Blue Sulphur Springs Turnpike Company.	4,950.00		4,950.00
109	Logan, Raleigh and Monroe Turnpike Company	7,321.24		7,321.24
110	Marshall and Ohio Turnpike Company	11,943.75		11,943.75
111	Martinsburg and Potomac Turnpike Company	15,290.00		15,290.00
112	Middleway and Gerardstown Turnpike Company	11,943.75		11,943.75
113	Moorefield and North Branch Turnpike Company	28,137.75		28,137.75
114	Moorefield and Alleghany Turnpike Company	8,779.78		8,779.78
115	Morgantown and Bridgeport Turnpike Company	10,687.40		10,687.40
116	New Creek and Hardy Turnpike Company	5,431.24		5,431.24
117	New Manchester Turnpike Company	2,000.00		2,000.00
118	Newark Turnpike Company	3,000.00		3,000.00
119	North River Turnpike Company	5,400.00		5,400.00
120	Pattersons Creek Valley Turnpike Company	9,900.00		9,900.00
121	Parkersburg and Elizabethtown Turnpike Company	4,800.00		4,800.00
122	Pleasant Valley and Tunnelton Turnpike Company	4,078.45		4,078.45
123	Potomac Turnpike Company	2,489.70		2,489.70
124	Raleigh and Boone Graded Road Company	1,800.00		1,800.00
125	Ravenswood and Reedy Creek Turnpike Company	8,999.99		8,999.99
126	Red and Blue Sulphur Springs Turnpike Company	8,856.66		8,856.66
	Carried forward,	$534,037.51		$482,837.01

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward.	$534,037.51	.....	$482,837.01
	Turnpike Companies (Continued):			
127	Reedy and Harrisville Turnpike Company.....	1,751.87	.....	1,751.87
128	Ritchie and Gilmer Turnpike Company.....	8,891.18	.....	8,891.18
129	Sandy River Turnpike Company.....	3,000.00	.....	3,000.00
130	Salem and Harrisville Turnpike Company.....	3,817.92	.....	3,817.92
131	Sheperdstown and Smithfield Turnpike Company.....	18,575.00	.....	18,575.00
132	Shinston Turnpike Company.....	13,302.26	.....	13,302.26
133	Smithfield, Charlestown and Harpers Ferry Turnpike Co.	14,000.00	.....	14,000.00
134	Sistersville and Salem Turnpike Company.....	9,000.00	.....	9,000.00
135	St. Mary's Turnpike Company.....	6,000.00	.....	6,000.00
136	Sweet and Salt Sulphur Springs Turnpike Company....	10,104.00	.....	10,104.00
137	Walnut Gap Road Company.....	1,305.37	.....	1,305.37
138	Wellsburg and Washington Turnpike Company.....	7,071.01	.....	7,071.01
139	Wellsburg and Bethany Turnpike Company.....	12,590.22	.....	12,590.22
140	Weston and Gauley Bridge Turnpike Company.....	64,098.31	.....	64,098.31
141	Weston and Fairmont Turnpike Company.....	97,962.50	.....	97,962.50
142	Weston and West Union Turnpike Company.....	5,538.21	.....	5,538.21
143	West Union Turnpike Company.....	3,054.00	.....	3,054.00
144	West Milford and New Salem Turnpike Company.....	10,526.32	.....	10,526.32
145	White and Salt Sulphur Springs Turnpike Company....	4,000.00	.....	4,000.00
146	Wheeling, West Liberty and Bethany Turnpike Company.	21,000.00	.....	21,000.00
147	Williamsport Turnpike Company.....	5,130.65	.....	5,130.65
	Total.....	$854,756.33	.....	$803,555.83
	Banks:			
148	Fairmont Bank.....	$ 50,000.00	.....	$ 50,000.00
149	Northwestern Bank of Virginia at Wheeling.....	341,800.00	.....	341,800.00
	Total.....	$391,800.00	.....	$391,800.00
	Town of Bath:			
150	Loan to Town of Bath for road to St. John's River	$ 2,500.00	.....	$ 2,500.00

ıer Evidence and Proceedings Relating to Paragraph III of the Decree.

[*Vol 1. November 16, 1908.*]

TESTIMONY ON BEHALF OF COMPLAINANT. 57

under

Paragraph 3 of the Decree.

ARTHUR G. POTTER,
testified as follows:

Mr. Anderson:

. Mr. Potter, state whether this paper, marked, "Expenditures West Virginia. Article III. (Part 1, Interstate Improvets)," has been prepared responsive to the third paragraph of the ree?

. Yes, sir.

. What is that a statement of?

. The first part of it is a statement of expenditures for what call interstate roads, or interstate internal improvement enterres, covering internal improvements starting in the present State Virginia and ending in the State of West Virginia—the expenıres in West Virginia.

). The first part is a statement of expenditures in West Virıa, on account of what?

.. Interstate improvements.

). And the second part?

.. Expenditures in the State of West Virginia entirely for imvements within her counties.

). Please state how those expenditures were made up, and from ıt sources?

A. From the printed records of the Board of Public Works, veri- by the register kept by the Second Auditor.

). Are you prepared to state whether those statements are cor-t, so far as shown by those records?

A. To the best of my knowledge and belief, they are all cor- 58
t.

). As to all the items which they contain?

A. Yes, sir.

Q. Those statements, as I understand you, are made up from authentic public records of the State of Virginia?

A. They are.

Q. Have you verified those statements?

A. Yes, sir, personally.

Q. Are you prepared to say those statements are correct?

A. They are, to the best of my knowledge and belief.

Mr. Anderson: I offer those papers in evidence.

(The papers referred to, entitled respectively "Expenditures in West Virginia, Article III. (Part 1, Interstate Improvements)" and "Expenditures in West Virginia. Article III. (Part 2, direct.)" are filed herewith, marked, respectively, "Plaintiff's Exhibit C-1—Part 1," and "Plaintiff's Exhibit C-1—Part 2.")

The Special Master: Now, what is your next?

Mr. Anderson: I understood Mr. Spooner desired to ask a question of Mr. Potter.

The Special Master: Very well.

Mr. Spooner: I want to ask Mr. Potter where schedule 15 A, which is cited here as being attached, is?

The Special Master: 15-A is Plaintiff's Exhibit C-1, you are enquiring about now, Senator. 59

Mr. Spooner: Yes: "Expenses of Harper's Ferry Raid, summary of detail analysis." I would like to see that statement.

A. Do you want to know where the details are found? What was the question please?

Mr. Spooner: I want schedule 15-A, which is said to be attached, but which is not, so far as I can see.

A. You will find it here, Senator (indicating).

By Mr. Spooner:

Q. Did you charge the expenses of the trial and the hanging of John Brown, in this?

A. I can't say. I don't think so.

Q. Why should you not? Was not that money expended in West Virginia?

[*Vol. 4, May 5, 1909. Cross Examination of Arthur G. Potter.*]

I will turn this schedule over to Mr. McClintic, because he 288
is more familiar with the facts than I am.

By Mr. McClintic:

Q. Under schedule C-1, third section of the decree, these percentages marked thereon are made by whom?

A. I have not got the schedule to which you refer.

The Special Master: The entries made in red ink, plaintiff's exhibit C-1. It relates to the third item of the decree.

A. (Continuing) The percentages in red were made by—

Mr. Anderson: Wait until we get it.

The Special Master: The question is who made the computations that resulted in the percentages. Is not that it?

Mr. McClintic: Yes, sir.

The Special Master: Did you make them?

The Witness: I made them, and my assistant, Mr. John B. Lightfoot, Jr., assisted by the regular members of my staff.

Mr. McClintic: On what basis did you make them?

Mr. Anderson: What page is this?

Mr. McClintic: The first page. Take them in their order and go right along. I suppose you made them on some basis, the same basis or on a separate basis.

The Witness: Each one on a separate basis.

By Mr. McClintic:

Q. Did you make them all on mileage or some on a mileage basis and others on some other basis?

A. Some on mileage and some on direct expenses which were located—

Q. State generally how you made them; on what basis?

A. On the basis of mileage. 289

Q. State the general principles?

A. On the basis of mileage in some cases where no other method was available; but on a basis of the direct expenditures of the counties where such information was available.

Q. How did you ascertain the mileage when you did base it on mileage?

A. From the board of public works report from maps which we scaled and in some cases from post route maps, which maps we used in some cases; and also railroad maps and railroad guides.

Q. As to those maps, where did you get the maps from which you scaled them?

A. From the office of the Corporation Commission.

Q. What did you know as to the correctness of those maps?

A. Nothing except what the map bore on its face, that it purported to be the map of a certain road or railroad or what not?

Q. When you use the word map, explain the character of the map in a general way.

A. We had a number of maps made by the engineers of the State, showing the routes of the different turnpikes, which we found with the Corporation Commission, and they were hand made maps.

Q. And that is the character of the maps you always used?

A. Not always; we referred to a United States post route 290
map in one case.

Q. Only in one case?

A. I mean we had one map there which we referred to occasionally, sometimes to assist in locating these roads, and sometimes used independently. I have the explanation of the various ones that we have used on that basis.

Mr. Conrad: I suppose your Honor knows what the witness means by the Corporation Commission.

The Special Master: It is the Commission that has control of enterprises of that character?

Mr. Conrad: Yes, sir.

Mr. Moon: It is the successor to the board of public works?

The Special Master: I understand. It is the bureau where all those records will be.

Mr. Anderson: Yes. All the records of the Board of Public Works were turned over to the State Corporation Commission.

By Mr. McClintic:

Q. When you did not take maps, but took direct reports, what reports do you refer to?

A. Proceedings of the board of public works.

Q. What do you mean by proceedings of the board of public works, in that sense?

A. They are published volumes of the proceedings.

Q. On what were those based?

A. The reports of the engineers who built the roads. 291

Q. The engineer in charge of the particular road?

A. Or the State engineer in charge of all roads in the State.

Q. What did those reports show as to the location of the roads?

A. I cannot say offhand. In some cases they gave the town from which they started, the length of road built between certain points, and land marks; for instance, ridges of mountains, bodies of water, rivers, creeks, etc.

Q. And gave distances?

A. Gave distances in some instances, yes.

Q. Mr. Potter, where you took the basis of mileage, for instance, did you assume that each mile of road then cost exactly the same amount?

A. Not in all cases.

Q. When did you not assume it?

A. When we could determine that some part of the road had been macadamized, the cost of macadamizing was usually stated separately.

The Special Master: In the case of a turnpike?

The Witness: Yes.

By Mr. McClintic:

Q. If you did not know where that macadam was, would you divide that on a mileage basis, then?

A. Yes, sir.

Q. Did you make any difference in this mileage basis as to whether a road crossed a mountain, or whether it required excavation or anything of that character? 292

A. No, sir.

The Special Master: That is, you took the mileage without reference to the character of the country through which it went?

The Witness: Exactly.

By Mr. McClintic:

Q. Were bridges and culverts and things of that kind always charged extra or shown where they existed?

A. If they were identified in any way on the records we so treated them. I imagine there were many small bridges which did not show up separately as bridge constuction which we included possibly upon the mileage basis.

Q. The fact that a road crossed the Allegheny Mountains did not enter into the computation one way or the other on a mileage basis, did it?

A. It would depend on where the State line was.

Q. Supposing that was the State line—

The Special Master: The point is, was the character of the country where they crossed the Mountains taken into account?

Mr. Harrison: He said no.

The Special Master: That is your point, is it not?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. You charge this under what you might term two heads, one called interstate improvements, and the other direct.

The Special Master: Where do you find that?

Mr. McClintic: On the first page. That is the general statement, in Exhibit C-1. 293

The Witness: The "direct" begins at page 4.

Mr. McClintic: I am at page 1 now. I was speaking of the front page. Under the first head, in general what classes do you include?

The Witness: Only roads which were built partly in both states—roads and other improvements.

Mr. Harrison: What do you mean by the first head?

Mr. McClintic: I just named that: first, interstate improvements, and, second, "direct."

Mr. Harrison: Direct begins on the fourth page.

The Special Master: It is the title of the Exhibit that you refer to?

Mr. McClintic: Yes.

The Special Master: "Part 1; interstate improvements. Part 2, direct." Now, what you want to know is what he included under interstate improvements?

Mr. McClintic: Yes. What did you include under the second one?

The Witness: Expenditures made exclusively in the counties which now form West Virginia.

The Special Master: Are they separated in your report, these two classes of improvements, direct and interstate?

The Witness: Yes, sir; there is a separate total for the two.

The Special Master: Oh, a separate total.

By Mr. McClintic:

Q. Did you make any distinction between roads built directly by the state (using the word direct in the sense of direct appropriation), and those in which they bought stock in a 294
company?

A. I did not.

Q. So this includes as a direct charge all those in which the State of Virginia simply owned stock in the company or built the road, does it not?

A. Yes, sir.

The Special Master: You mean stock in whole or in part?

Mr. McClintic: In either case.

The Special Master: Both?

Mr. McClintic: Either owned the whole or part of the stock. I ask him whether he included that as a direct charge.

Mr. Conrad: In some cases they owned three fifths of the stock. In other cases the road was built by the Commonwealth. In the case of the northwestern turnpike it was built exclusively by the Commonwealth. In other cases the Commonwealth by purchase or subscription to the stock, owned three fifths.

The Special Master: Yes; but do these items include just what the State paid out on account of its three-fifths subscription?

Mr. Anderson: Both.

Mr. McClintic: Let me ask a question and we will find out.

Mr. Conrad: There is some misapprehension as to your Honor's inquiry. I understand your Honor's inquiry to be addressed to the fact as to whether this report showed in two parts the 295
money appropriated by the State, where it exclusively built a road.

The Special Master: Yes.

Mr. Conrad: And also where it subscribed to three fifths of the stock?

The Special Master: Yes.

Mr. Conrad: It had nothing to do with private subscriptions to the other two fifths. That has nothing to do with this case.

The Special Master: Where the State was the owner of three-fifths and private individuals the owners of two-fifths, this covers, as I understand it, the amount the State expended for its three-fifths.

Mr. McClintic: It did not necessarily own three fifths. Sometimes it would be two fifths, or other sums.

The Special Master: I understand; but whatever it might own, I mean. This schedule shows what the state did expend for, what it did own?—

Mr. Carlisle: And charges what the state paid for its stock as a direct expenditure by the State, for their stock in West Virginia.

Mr. Anderson: It includes all expenditures made by Virginia in works of internal improvements in West Virginia, whether those works of internal improvements were owned wholly by the State or partly by the State.

Mr. McClintic: That is a contention by Mr. Anderson which we do not agree to.

The Special Master: Of course it is only important for me now to get the position taken by each party to the contro- 296
versy. The total cost may be seen here, all that is here is the cost to the State of Virginia. So we know what the item means.

Mr. Carlisle: Of the stock?

The Special Master: Yes; of the stock. Whether that is a proper item to be charged is another matter.

Mr. McClintic: Take the Berkeley and Hampshire turnpike. Is that a joint stock company or a private corporation?

The Witness: I don't know.

Mr. Conrad: Your summary statement does not show that?

The Witness: No, sir.

By Mr. McClintic:

Q. Did you know as to any of these companies, whether joint stock companies, or private corporations?

A. We made no inquiry into that, as to the form of the Company itself.

Q. Were not the books so kept that they showed an account with each company?

A. Yes, sir.

Q. Did you examine those books?

A. We did.

Q. Why did you not state the facts on your exhibit, then?

A. We did.

Q. You did not state whether it is a company or a direct appropriation. Is not that the fact—that appeared on the books?

A. I think it appeared on the books under the head of Berkeley & Hampshire Company, and we have simply the 297
Berkeley and Hampshire turnpike.

Q. Did it say whether the State made a direct appropriation or took stock?

A. Yes, sir.

Q. You do not show that on your schedule, do you?

A. We simply state the amount of money expended by the State in the interest of that road, by stock or by direct appropriation.

The Special Master: You did not differentiate between the two?

The Witness: No, sir.

By Mr. McClintic:

Q. You make no distinction between stock and direct appropriation?

A. No, sir.

Q. Take the second one on the list, the Berryville & Charleston turnpike. You have charged there the total cost of the road, $27,692.71, and charged 68 per cent in West Virginia?

A. Yes, sir.

Q. There is an item there, $7,236.97. Do you know what that was paid for?

A. I only know it appeared on the Commonwealth ledger and in the auditor of public account's report of 1858.

Q. You never looked back to see what it was paid for?

A. I cannot say that we did not; I think probably we did; but I do not remember that particular item.

Q. Did you make any examination of that particular road 298
as to whether there were certain stock charges and certain direct charges in relation to it?

A. No, sir.

Q. Just left it as it was?

A. Just as the previous one.

Q. The third item on the first page is the Covington & Ohio Railroad, now the Chesapeake & Ohio Railroad line. In settling the amount for the Allegheny tunnel ($284,873.18) please state the basis.

A. I have not the information with me to answer that question. I can give it roughly by saying we took the total length of the tunnel from a copy of the profile and established the State line and measured the distance from the entrance of the tunnel to the State line, on both sides, and used that to obtain the percentage which we used in dividing the total cost of the tunnel, which was stated separately in the books of the Covington & Ohio Railroad

under sections 19 and 20—that is, the total cost, sections 19 and 20, including the cost of the tunnel, were under one account. We applied it to that amount and divided it on that basis.

Q. Sections 19 and 20 included a lot more distance than the tunnel, did they not—a lot more distance?

A. They did.

Q. Did you take into account on that tunnel only sections 19 and 20 as a whole, and divide that?

A. Yes; 19 and 20 as a whole.

Q. How much of Section 19 was in the present limits of Virginia; or do you know that?

A. I cannot say from the information before me. I have the information with my other papers.

Q. Did you take into consideration in any way the long 299
cut that was made on the Virginia side before the West Virginia side was reached?

A. No, sir.

Q. You say that these measurements were made. Who made the measurements?

A. They were made from the profiles.

Mr. Carlisle: Who made them?

The Witness: I think I made it personally.

By Mr. McClintic:

Q. Where did you get the profiles?

A. I think Mr. John B. Lightfoot, Jr., got it from the Chesapeake & Ohio Railroad, and had a copy of that made. We got the copy from them, and had a copy made.

Q. Did you take into consideration in any way the approaches: that is, the cuts on the West Virginia side, in making any charge?

A. Not if I remember correctly.

Q. How long a space did Sections 19 and 20 cover in distance?

A. I have not that information before me.

Q. In making up these charges, what did you use, what book, on the Covington & Ohio?

A. The journal, ledger and cash book, I think.

Q. The journal and cash book of what?

A. Of the Covington & Ohio Railroad; and also the board 300
of public works ledgers, A and B, with the journals.

Q. Were separate books kept of the Covington and Ohio? I am speaking of the whole railroad?

A. Yes; I have not the reference to those particular books, but I believe I am correct in saying that there was a separate set of books kept.

Q. Did you make up all the figures that make that $1,212,354.85?

A. I cannot say I made them up individually. They were made up by my force.

Q. Are you prepared to say that that is a correct charge from those books?

A. I believe it is.

Q. You know it is?

A. I believe it is.

Q. That is your best judgment?

A. Yes, sir.

Q. Did you analyze each and every account that appeared in those books?

A. They were analyzed by my force. I did not do the work individually.

Mr. Moon: It was done under your supervision?

The Witness: Yes, sir.

By Mr. McClintic:

Q. You say it was done under your supervision. What do you mean?

A. I mean one of the men who assisted me did the work, 301 did the mathematical part of the work. I laid out the plan and he followed it, and I looked over his work after he had finished it. The mathematical accuracy of it was tested by another man.

Q. At what point did you get into it?

A. I laid out the plan and instructed them what to do, what to include and what to exclude and how to make the divisions, and how to put the figures together.

Mr. Anderson: You were here all the while?

The Witness: I was here all the while.

By Mr. McClintic:

Q. How much of this $1,212,000 is a direct charge and how much did you estimate or apply by estimation?

A. All of sertions 21 to 39, eastern division; and all of the western division, $906,817.20.

Q. Is that a direct charge?

A. That is a direct charge, all west of the Allegheny tunnel; 32.4 per cent of the total surveying and location expense on a mileage basis, making $20,664.47, and 12-23rds of the total cost of Sections 19 and 20, including the total.

The Special Master: The first two items are the result of computation and the others of direct charge?

The Witness: No; in the order in which I gave them, the first one is direct.

The Special Master: The second is a direct charge?

The Witness: Yes, sir:

By Mr. McClintic:

Q. In these roads which you charge along there in red ink 302
a certain percentage, can you tell where you charge that percentage by mileage and which by other means?

A. Yes, sir. The Berkeley and Hampshire turnpike was on a mileage basis; the Berryville and Charleston was on a mileage basis; the Covington & Ohio I have just explained; The Cross Roads and Summit Point turnpike was on a mileage basis. The Franklin and Monterey was on a mileage basis. There is a charge there of $861,305.91—

Q. Referring to the $861,305.91, please tell the Commissioner when you entered these charges, what was your stopping point?

A. A draft in that particular case for payment—

Q. That was not the question. When did you stop making charges?

The Special Master: Up to what date did you make this computation?

A. All obligations, payments up to December 31, 1861, and as many obligations as we could determine had been entered into but not actually paid for work actually done prior to December 31, 1860, which were paid in the following year—1861.

By Mr. McClintic:

Q. Are we to understanud you to say that you stopped all charges as of December 31, 1860, or 1861? You said 1861.

A. I mean 1860, with the exception of such other items as I explained.

(Informal discussion followed in regard to the taking of recess.)

The Special Master: You will remember that the treasurer, when he took the stand was not sworn. I suppose there is no ob-
jection to his statement being taken as if it were taken under 303
oath.

Mr. Conrad: There is no objection to that.

Mr. Carlisle: That is the understanding.

By Mr. McClintic:

Q. On page 2 there is a road called the Mountain Lake and Sulphur Springs turnpike. On what basis did you divide it?

A. On the basis of mileage.

Q. How did you arrive at the mileage in that particular case?

A. The distance was estimated from the map of post roads in the State of Virginia and in West Virginia, authorized by the Postmaster General in 1904, according to scale. In other words, we scaled the map.

Q. What was the beginning of the road?

A. I cannot tell. It ran through Giles and Monroe Counties. I don't know just where it started or ended.

Q. Please find out for me the beginning and end of that road and give me that information after dinner or some other time?

A. Very well, sir.

The Special Master: You had better be prepared to produce all the original memoranda you used in reaching your results.

By Mr. McClintic:

Q. Take the Giles, Fayette and Kanawha. Was that divided on a mileage basis? I want to run over these rapidly to see whether we are on the same basis or not. That is on page 1. 304

A. On a mileage basis.

Q. How about the Hardy & Winchester?

A. On a mileage basis.

Q. How many miles did you make that road?

A. By Crozet's, 70 miles.

Q. Did you make any further examination to see whether that was correct as to mileage or not?

A. I have not that information before me.

Q. You don't know?

A. At the present time I cannot say.

Q. The Huntersville and Warm Springs road?

A. On a mileage basis.

Q. That first charge of $1,000 in 1833—was that spent on that road?

A. The notation on my schedule shows it was money advanced Peter Scales, an engineer, for his account and expenses in laying out the road.

Q. The Martinsburg and Winchester. Is that divided on a mileage basis also?

A. On a mileage basis. yes, sir.

Q. The Morgan and Frederick?

A. On a mileage basis.

Q. The Northwestern turnpike; how is that divided?

A. On a mileage basis as to the cost of laying out the road, the cost of surveys and locations; but all of the cost of macadamizing was charged direct to West Virginia, with the exception of five miles, as shown by comparison. 305

Q. You say 92.8 per cent of total loan, $308,000. What do you mean by that debt?

A. The State raised loans, amounting, if I remember rightly to $320,000, of which we charged 92.8 per cent. on a mileage basis to West Virginia.

Q. What books did you get that from?

A. The amount of the loan?

Q. No; how it was divided.

A. The total length, see Crozet's report. Other distances, see proceedings of the Board of public works, Volume ?, page ??.

Q. Were there any original books kept on that, separate from the general books?

A. Yes.

Q. Did you analyze these accounts and get this amount from those books?

A. We analyzed the accounts from those books; but it was not possible to locate them entirely to our satisfaction. So I adopted this method.

Q. You took the percentage method rather than take the direct books in that case?

A. Yes.

Q. And part of that road went through the State of Maryland, did it not?

A. It did.

Q. Was any charge made by you for anything on that ac- 306
count?

A. We made no distinction. We included the item of the cost of the road through that section of Maryland.

The Special Master: I did not hear that answer.

The Witness: We included the cost of the road through that small section of Maryland.

The Special Master: That made a part of your total?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Who built that part through Maryland?

A. The Northwestern turnpike company, incorporated under the laws of Maryland.

Q. Under the laws of Maryland?

A. I believe so.

Q. What interest, if any, did Virginia have in that company?

A. I don't know that, except if my memory serves me, the manager or the engineer of the road was the president of the Northwestern turnpike in Maryland.

Q. Did Virginia own any stock in it?

A. I don't know.

Q. You don't know?

A. I don't remember.

Mr. Spooner: Your memorandum will show, will it not?

The Witness: I think it will.

The Special Master: What is the length of the road in Maryland?

The Witness: I think it is about eight miles.

Mr. McClintic: Eight or ten or twelve miles. 307

Mr. Spooner: I would like to make a suggestion. This witness is an expert. He knew he was to be cross examined, and yet I think he has answered a great many questions by saying that he has not the information before him, and a great many questions by saying that the memoranda are not here. I think he ought to bring whatever memoranda he had, from which he compiled these reports, in order that he may, if it is important and desirable, make swift reference to them and be able to answer the questions.

The Special Master: There is no question about that. I have suggested to Mr. Potter, and also I will suggest to Mr. Dixey, that they must both be prepared with all of the original sources of information upon which they have relied for the purpose of getting up these accounts; because counsel on either side are entitled on cross examination to know just the method used in reaching the result, and they have a right to see the original books and memoranda.

Mr. Spooner: Mr. Dixey informs us that that is the rule with accountants and that he will be prepared in that way.

Mr. Harrison: In justice to Mr. Potter I would state that it has been six months since he finished his accounts.

The Witness: We cannot possibly bring all the books from which we took this information.

The Special Master: Of course my suggestion is subject to that qualification—whatever you have that is movable and you can bring here. 308

Mr. Spooner: Your own notes.

The Special Master: Your own memoranda and notes, yes. If there are any books or records of such a character that they cannot be brought in here, if we need them, we will adjourn and go to see them; but in the meantime you will please have your notes here, so that the gentlemen on the other side can in cross examination criticize them as they like. And please bring all the sources of original information that are available. If you have time during the intermission—I do not ask you to do it now, but if you do have time—I would like you to take these exhibits and page them so we will have everything harmonious, and so when we refer to a page of an exhibit we will know just which one it is.

(Thereupon, at 1 o'clock a recess was taken until 2 o'clock P. M.)

AFTER RECESS.

The Special Master: You may proceed. 309

ARTHUR G. POTTER,

resumed the stand for further Cross Examination.

By Mr. McClintic:

Q. Mr. Potter, did you take into account on the Northwestern road the tolls paid in prior to the War?—I mean prior to the 1st of January, 1861?

A. As credits?

Q. As credits or otherwise.

A. We did not take them into account.

Q. Did you take in none of them, in any way or shape?

A. We took a note of them. We have them summarized in our papers, but we did not allow them as a credit on this account.

The Special Master: That is, you are inquiring into the proportion of the tolls paid into the Treasury of Virginia.

Mr. McClintic: Yes, sir; on a road wholly owned by the State.

By Mr. McClintic:

Q. How much was the amount you have, Mr. Potter?

A. My account on page 38 of the Northwestern ledger shows, for toll gates, $152,679.26 received as tolls. I don't know that all that was turned over to the State, but that is the account in the ledger.

Q. You neither gave credit for that here nor anywhere else?

A. No sir. 310

Q. Or any proportion thereof?

A. No, sir.

Q. Now, Prices Turnpike and Cumberland Gap Road, page 3. Was that divided on a mileage basis?

A. Yes, sir.

Q. You have no percentage put down there. Do you mean that is the part that was given to West Virginia on a mileage basis?

A. Yes; I have the percentage in another schedule. I don't recall why it was not put in that schedule, but it was on a basis of 91.3 per cent. Virginia, and 8.7 per cent. West Virginia.

Mr. Harrison: What item is that?

A. Price's Turnpike and Cumberland Gap Road.

Q. This amount you have here is what?

A. That is 8.7 per cent, I think, of the total. The total is not

shown there. It is just divided. The extensions are made to the two divisions.

Q. Is the next, the Raleigh and Grayson, divided by mileage?

A. No; from the report of the president of the board of public works of the 12th of October, 1852, Document 18, Volume 17, the date of the report, the Section of the road in Raleigh county was reported at 10 miles—excuse me; I am mistaken about that. I would like to have that stricken from the record. I read my note wrong. That is on a mileage basis.

Q. Did not those same reports show where each dollar of 311
that road was, or practically all of it?

A. I don't think so. We have relied upon the board of public works account, on page 14 of Ledger B, for the total expenses of the road, and divided it on that basis, the mileage basis.

Q. In the case of the Raleigh and Wythe line, you have charged $400 in 1862, $2,200 in 1861, and $200 in 1862. Please explain those.

A. The items in 1861 and 1862 are for contracts made and for work done prior to December 31, 1860.

Q. Who paid them?

A. The board of public works. The record is in the board of public works Ledger B, page 269, from the board of public works' funds, by the treasurer.

Q. By what government was the 1862 payment made, for instance?

A. The Virginia government.

Q. What government in Virginia was it, the one that recognized the United States of America, or the one that did not recognize the United Stated of America?

Mr. Harrison: I suppose you refer to the Richmond goverment?

A. Yes, sir.

Mr. Conrad: All governments of Virginia recognized the United States of America.

Mr. McClintic: Did it give allegiance to the United States of America?

The Special Master: Probably as far as was compatible with the circumstances?

By Mr. McClintic:

Q. Now, the Staunton and Parkersburg turnpike, page 3. 312
Were there any tolls on that road?

A. I believe there were tolls received from that road.

Q. Was any credit given for those anywhere?

A. No sir; no credit.

Q. Where did you get the items in reference to the Staunton and Parkersburg?

A. The Board of public works ledgers A. and B.

Q. Did you divide that on a mileage basis also?

A. No; we divided the construction items, macadamizing and engineering expenses, on the basis of 74.83 per cent. to West Virginia, and debited West Virginia with the bridges and direct construction items in West Virginia.

Q. Did not those books show where most of this construction was? Most of the expenditures were by counties.

A. I don't remember that it did; no.

Mr. Spooner: Does not your memorandum show? Have you not a memorandum to show that?

The Special Master: See what your notes show in that regard.

Mr. Spooner: That is what I am asking, whether he has any notes that show.

Mr. Harrison: What was the question?

The Special Master: Whether the books do not show where the money was expended, that is, what locality.

Mr. Harrison: What part of the road?

The Special Master: Yes, I suppose that is it.

A. My notes do not indicate that the books show with suf- 313
ficient accuracy to be depended upon.

By Mr. McClintic:

Q. They indicate that it showed the expenditures?

A. Yes, by sections.

Q. You knew in which counties the sections were, did you not?

A. Not with absolutely certainty.

Q. Do you know that the books do not show with accuracy?

A. I do not. I can't say positively at this time. The books are on file in the second auditor's office.

Q. Did you examine those books yourself or through an assistant?

A. I directed the work in examining. Some of the work I examined myself.

Q. You simply do not know, then, beyond what was told you?

A. Yes; I satisfied myself that it was not safe to take the divisions to be found in those books.

Mr. Spooner: But you want to satisfy us and the court.

A. That is all I can say.

Mr. Spooner: You cannot do it?

A. That is all I can say in order to satisfy you.

Mr. Conrad: You are too hard to satisfy.

Mr. Spooner: You ought to have the data.

By Mr. McClintic:

Q. If the books showed the sections and the county why 314
was not that sufficient?

A. I testified that we could not locate the sections with absolute certainty within those counties.

Q. It was quite as satisfactory to locate it in that way, was it not, as guessing on the mileage or guessing where the work was done in that 234 miles that the road covered or thereabouts?

A. I think it was a safe basis to divide the construction and the mileage as we have done it *no* other roads and then divide such direct expenses as we could definitely locate.

Q. Was it not a much better method to take direct construction where you were able to?

A. I don't know that there was any direct construction in this case.

Q. Were there not direct books kept on that subject matter all alone to themselves?

A. Yes, sir.

Q. Did not those books show by reports continuous and often, the process of construction and the amount of cost?

A. I don't recall that we found any reports showing the cost at different periods, or the process of construction at different periods.

Q. So you did not make a sufficient examination of those books to remember those facts, did you?

A. I would not go so far as to say that. I made a pretty thorough examination, or had it made under my direction, and as I said before I satisfied myself that the basis we used was the 315 most accurate.

Q. This was a road 234 miles long, was it not?

A. Yes, sir.

Q. From Staunton, Virginia, to Parkersburg, West Virginia on the Ohio River?

A. Yes, sir.

Q. Of which you say 74.83 per cent was in West Virginia.

A. Yes, sir.

Q. Was not that as capable of being differentiated on the books kept as in the case of the Covington and Ohio Railroad?

A. No; it was not. The Covington and Ohio Railroad Books were kept in a much more thorough manner, if I recall them properly. This road was divided into three divisions, the western division, and middle and the eastern.

Q. How much was in each division?

A. We have fifty eight miles and 72 chains in Virginia, and 17 miles and 8 chains in West Virginia, but I have not the figures right here as to the length in the different divisions, except that of the eastern division, which was 75 miles long, 58 miles lay in Virginia and 17 miles in West Virginia.

Q. Then all the balance except the eastern division were wholly in West Virginia, were they not?

A. The western divison and the middle division were both in West Virginia.

Q. The books were so kept as to show accurately the amounts that went to each of those, were they not?

A. I don't recall just—

By Mr. Spooner.

Q. Is it not your business to know?

A. It was at the time, but it has been some six or seven 316
months since I saw those books.

Q. But you must have memoranda from which you can testify?

A. We didn't copy the books.

Q. If you directed it, you ought to know upon what basis you directed it?

A. I simply had to rely upon my judgment at that time, which was that this was the most equitable division of the expenses.

Q. That is for court, not for you.

Mr. Harrison: You are asking him for the foundation of his statement.

Mr. Spooner: We are asking him for the facts.

By Mr. McClintic:

Q. You say these books were not so well kept as the Covington & Ohio books. What was the difference in the bookkeeping between the two?

A. I mean to say the items were not capable of the same analysis as were the items of the Covington and Ohio, by divisions, because we had a profile of the Covington and Ohio Road which guided us. We had no maps of the Staunton & Parkersburg, if I remember right.

Q. How did you arrive at the mileage, then?

A. From reports.

Q. What reports?

A. The survey of the principal engineer, Crozet's field book. 317
1838 and 1839.

Q. Did that State the amount of mileage in Virginia and the amount in West Virginia?

A. That located the distance from Staunton to the top of the Alleghany Mountains, as 58 miles and 72 chains.

Q. Were there not maps filed with those books, or of that road, showing the whole distance?

A. There may have been. I don't recall that we found a complete map or complete maps showing the entire route.

Q. Did you give credit for the tolls on that road anywhere?

A. No, sir.

Q. How much did they amount to?

A. I can't say offhand. I can look it up. It is somewhere in my papers, but I do not know that I can find it. I may not have it in summarized form. It may have been included in the receipts from the various internal improvement companies, which we did not summarize, but which we threw into a total with all other details.

By Special Master:

Q. You are not able to find that now?

A. No sir; I am not able to find it at present. I could find it if I were allowed the time.

By Mr. McClintic:

Q. The next road is the road from Skedmore Fork to South Branch of Potomac. Was that divided on a mileage basis?

A. Yes.

Q. The next road, Strasburg to Capon Turnpike. Do you 318
assert that any part of that road is in Virginia?

A. We figured that 16 per cent of the distance lies in West Virginia.

Q. Where did you find the report of the Strasburg and Capon Turnpike, Mr. Potter?

A. We traced the road through Shenandoah, at Frederick and Hampshire counties, from the Board of Public Works document 17, year 1857, page 215, which shows the road through Shenandoah, Frederick and Hampshire counties, 12½ miles. The distance has been scaled from the United States post route map of 1904 as 2 miles in West Virginia and 10½ miles in Virginia.

Q. Did the report state that part of it was in Hampshire county?

A. I don't recall.

The Special Master: Is there a map of the State, giving these various towns and these public enterprises, that I could have here to look at?

Mr. McClintic: The gentleman here can furnish it, no doubt.

The Special Master: Hampshire county is Greek to me. It might just as well be located in Florida.

Mr. Anderson: We have a very good map, your Honor.

The Special Master: If you have a map of that kind, I would like to have it to follow this along as you proceed. The testimony would be more intelligible to me.

By Mr. McClintic:

Q. Did you find it actually was constructed to Capon from 319
any evidence that you could see in the case?

The Special Master: Constructed to Capon?

Mr. McClintic: Yes.

A. Well, evidently we did find some evidence that it was constructed. I don't recall that particular road.

Q. Are you only testifying from the results of what you once had in your mind?

A. I cannot possibly carry all the details of this tremendous case in my mind, especially after the lapse of six months since I saw the papers.

By the Special Master:

Q. Have you anything on your notes to indicate the sources of your original information on this item?

A. I have just read the reference to the Board of Public Works.

Q. You have nothing else that refreshes your recollection on that point in your notes?

A. No, sir.

By Mr. McClintic:

Q. The next item is the Winchester & Potomac Railroad Company, of which you charge West Virginia with $168,750. What are those charges made for, say the one in 1834, $50,000?

A. I can't say. All I know is that the amount was charged to that account on the Board of Public Works ledger as a payment to the Winchester & Potomac Railroad.

By the Special Master:

Q. In a lump sum?

A. In a lump sum. I don't know whether it was by sub- 320
scription to stock or payment for construction.

By Mr. Spooner:

Q. Does not your memorandum show?

A. It does not.

By Mr. McClintic:

Q. Did you make no further investigation of an item for a railroad like that than just the Board of public Works ledger, that so much was charged to it?

A. No; we considered that good evidence that payment had been made.

Q. If the Board of Public Works had loaned Governor Johnson of Clarksburg $100,000, and you found it on there charged to Governor Johnson, would you simply put it on this account without looking further?

A. No; we would have looked further to see whether there was any recovery on that loan.

Q. Did you look in this case, to see what these charges were for, whether they were gifts, stocks, loans or what?

A. We determined that they were payments in some form, either for stock or for subscription to the road for construction purposes. There were certain loans which were made and later recovered, which we have eliminated from the account.

Q. In this case?

A. In respect to this road.

Q. Which part of this $270,000 is for stock and which part is for loans, if you know?

A. I don't know.

Q. Have you any means of finding out, from your notes 321
or otherwise?

A. Not from the notes. I can find out from the books of the 2nd Auditor's Office.

Q. What amounts were loaned and afterwards repaid, which you just spoke of?

A. In 1835, the first $10,000, the loan was made in 1835 and paid in 1836. The next loan was $30,000, made in 1835, and paid back the same year to the Board of Public Works by the Winchester & Potomac Railroad. The next loan was in 1836, and repaid the same year.

Q. Then you cannot tell whether any part of this $270,000 was a loan, a stock subscription or a direct appropriation?

A. I can say definitely that it was not a loan.

Q. No part of it was a loan?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did you make an examination of the books of Virginia in reference to income paid from that Winchester & Potomac Road to the State, if any?

A. I have it among my other papers. We analyzed all of the receipts.

Q. What receipts did you get from the Winchester & Potomac Road?

A. I can't tell you. They are not brought into these state-
ments. We have them in another form among our original 322
papers, but not having taken them into our statements, we did not summarize them.

Q. When was the Winchester & Potomac Road incorporated, if you remember?

A. I have no notes on that point.

Q. Did you look at the books of Virginia, following the period of 1861, as to what Virginia did with that part of that road?

A. I did not.

Q. You have no knowledge of anything occurring subsequent to 1861, then?

A. No, sir.

Q. Did you examine the books of Virginia as to an Act of the legislature providing for a surrender of anything from this road by the payment of an annuity?

A. I don't recall such an act.

Mr. Conrad: You refer to the act of 1866 or 1867?

Mr. McClintic: I am not referring to the Act of 1866 or 1867 in that matter. He said he knew nothing about those, so I did not go into that.

By Mr. McClintic:

Did you find any Act in 1846, or did you look for any Act, or see any payment made by this Road to the State of Virginia?

A. The Commonwealth or the Board of Public Works?

Q. I cannot tell you myself, except the payment of the money.

Mr. Harrison: Did you ask whether that was a payment under the Act of 1846?

Mr. McClintic: A payment of $50,000 by an annuity. 323

The Special Master: Paid by the Railroad to the State.

Mr. McClintic: Yes, sir.

A. I don't find such a receipt in the year 1846, either in the Board of Public Works or on the Commonwealth books.

By Mr. McClintic:

Q. You do not find any sum paid by the Winchester & Potomac road to the State in those years, 1846 to 1861, inclusive, or any one of them?

A. I have only examined one year.

Q. You do not find any in 1846.

A. No, sir; not in 1846.

Q. We will not take time to go into each year after that if you do not remember anything about it. The Hillsboro and Harpers Ferry road, page 4. Was that divided on the mileage basis?

A. On a mileage basis; yes.

Q. And the same as to the Harrisonburg and Hardy road?

A. Yes; on a mileage basis, as near as we could get at it.

Q. You have charged the sum of $428,063.86 on account of James River and Kanawha interest, as you term it?

A. Yes.

Q. You have charged there bonds to Kanawha Board, in 1860, $100,000. What was that; I mean as to a loan, or buying stock, or direct appropriation, or what?

A. It was an issue of bonds under the Act of March 23, 1860. I believe the Act shows the manner in which the $100,000 was to be paid to the Kanawha Board.

Q. Do you call that a loan or a direct appropriation or 324
what do you put it under? Under what head in that line?

A. I don't recall.

Q. What was the James River & Kanawha Company? I mean, was it a corporation or what was it?

A. I don't know the exact status of it.

Q. Do you know whether it was or was not a corporation?

A. I think it was a corporation; yes. It issued stocks.

Q. Then you know it was, do you not?

A. Yes; it was a corporation in some form.

Q. Was not that $100,000 loaned to the James River and Kanawha Company?

A. I don't remember.

Q. Was it delivered to the James River & Kanawha Company?

A. I didn't see the receipt, but I saw the evidence of the issue of the bonds in the bond registers to the James River & Kanawha Company. We did not go to the transfer books to see if the bonds were actually turned over to them.

Q. Did you see any other evidences than the bond register?

A. I don't recall that we did, except the Acts.

Q. You saw the Acts authorizing the issue?

A. Yes, sir.

Q. Do you know the James River & Kanawha Company got $100,000 worth of bonds?

A. I can't state positively. 325

Q. You found the bonds were issued?

A. Yes; the bonds were issued. I can't state positively that they got the bonds.

Q. You simply charge them because the bond register showed that they were issued?

A. They were charged to the Kanawha Board of the James River & Kanawha.

Q. Did you look further to see whether there were any evidences that the Kanawha Board got them? What was the Kanawha Board?

A. I can't recall the history of that. We have it in another form, I believe, in Mr. Lightfoot's report, the full details which we compiled, but it is rather a complicated organization, this old James River proposition, and I would not undertake to give the history of it offhand.

Mr. Conrad: There were two or three distinct companies in succession. The James River Company was the first one.

Mr. McClintic: The James River entered into it too. It is not worth while to mix this.

Mr. Conrad: It is not mixing it. I say there were three or four companies consecutively growing out of the original company.

The Special Master: Each the successor of the other?

Mr. Conrad: Yes.

Mr. Carlisle: There were several successors, were there not?

Mr. Conrad: Yes; three or four, I think, one right after the other.

By Mr. McClintic:

Q. You know nothing about this except that there were 326
certain bonds shown by the bond register issued to the James River & Kanawha Company for the Kanawha Board?

A. In a general way I satisfied myself at that time that it was a proper charge. Further than that I cannot testify at this time.

Q. Have you anything to refresh your memory so that you could testify on that $100,000 item directly?

A. I think so.

Q. I think you said you did not know whether these bonds were delivered to the James River & Kanawha Company?

A. No; I don't know.

Q. Or to the Kanawha Board?

The Special Master: He said he did not find any receipt from the company on the files.

By Mr. McClintic:

Q. When were they issued, Mr. Potter, if you will allow me to ask you a question while you are looking?

A. I don't know the exact date of the bonds. They were issued under that Act of March 23, 1860.

Q. Were they issued before December 31, 1860?

A. They must have been, I think, to come into my account. I would say offhand, yes, they were. Of course I have no proof of that just yet.

Q. You can look that up at your leisure, Mr. Potter. We will not take further time with that. You have charged on account of this James River & Kanawha interest, as you term it, in addition to the $100,000, some $431,000, I believe it is, in round figures, other charges. What did Virginia do with reference to that money in connection with the James River & Kanawha Company? 327

A. What did she do with it?

Q. What settlement was made with the James River and Kanawha Company by Virginia with reference to it.

Mr. Harrison: Are you referring to the $428,000 of interest?

Mr. McClintic: About $438,000.

Mr. Harrison: Those several items, you mean?

Mr. McClintic: Yes.

A. I don't know any settlement that was made by Virginia with West Virginia for that.

Q. I did not say West Virginia. I said between the James River & Kanawha Company and Virginia.

A. No; I don't know any settlement that was made between them.

Q. Did not Virginia take stock for that whole sum?

Mr. Harrison: Do you mean $91,666?

Mr. McClintic: The $91,000, the $107,000 and the $84,000; all those items.

The Special Master: Aggregating $424,063?

Mr. McClintic: Well, less the $100,000.

The Special Master: All the items included in that except the $100,000?

Mr. McClintic: Yes, it amounted to about $438,000. Somewhere along there.

A. I can't say at this time whether she took stock in payment for that or not.

By Mr. McClintic:

Q. Did you not refer to the Act of March 23, 1860, awhile ago?

A. I believe we did; yes.

Q. Did not that Act provide that she should take stock for 328 all that indebtedness?

A. I don't recall.

Q. Were separate books kept by the James River Company?

A. I believe they were, up to about 1836. In 1836, I believe, the James River books were closed.

Q. Did you look at the books along in 1832, 1833, 1834 and 1835, to see whether or not stock was taken for these early payments?

A. Well, we made an analysis of the books, both receipts and disbursements.

Q. What stock did Virginia have in the James River & Kanawha Company?

A. I have no record.

Q. You made no examination of that?

A. I have no record in summarized form of the stock she held at that time, at the end of this period, or at any time. We only have a record of the various amounts paid to the James River interest, and the amount she received from them, out of which we picked these items that were chargeable to West Virginia.

Q. Did not Virginia have stock for all the amounts owed her by the James River Company by 1860?

A. I think she did. I am not sure of that.

Q. Except this $100,000 to the Kanawha Board. I do not think she had any stock for that. Did not the James River & Kanawha Company pay Virginia in stock for all the money loaned?

A. I can't state positively that she did, because I have 329 not made a computation to ascertain that particular point. The object of our investigation was to find out how much Virginia paid to the James River interest.

Q. If the money was paid by the James River Company, even if it was paid in the form of stock, would you have looked to see any gross credits of that kind?

A. If it was paid back in stock, there would not necessarily be any gross credit.

Q. Would not the accounts be closed on the books?

The Special Master: Well, were they?

A. I can't say that they were.

By Mr. McClintic:

Q. Did you look to see?

A. Naturally we examined all of the entries pertaining to the James River items throughout the period, and that would come under the scope of that examination.

Q. You left that part out of your report if you found it, then, did you?

A. Our accounts here do not comprehend that point at all; do not comprehend the items received from the James River.

Q. I realize that, but I ask you if you found the other and left it out?

A. Yes; I think I can safely say that we did. We found everything in regard to the James River.

Q. When the debt was paid by the delivery of the stock of the Company to the State, why did you leave that out?

A. It is my impression that these items we have here were 330 not covered by payments of stock to the State.

Q. Do you know they were not?

A. I cannot state positively that such was not the case at this time, but naturally, having put them in, I think I am safe in saying that they were not. That was my opinion of it, at least, when I made these accounts.

Q. I am not asking your opinion. Is that your knowledge?

A. It is my best judgment that it was the case.

Q. I differentiate between your judgment and your knowledge. Do you know it or do you not know it?

A. I can't say that I positively know it, but I believe it is true.

Q. That these items were not paid by stock?

A. Were not covered by payments of stock.

Q. None of these items?

A. No.

Q. Now take the next page, page 5, I reckon you call it. It is not paged in this memorandum I have.

A. It is page 1 of the second division of this schedule.

The Special Master: I shall have these accounts all paged in their regular consecutive order, for reference in the examination.

By Mr. McClintic:

Q. There is charged there the Alleghany Mountain turnpike, for which you charge $1,074. Do you know that that 331
road is wholly within the State of West Virginia?

A. I believe that it is.

Q. On what do you base your belief?

A. Well, I was assisted in locating these roads by a native Virginian, who traveled more or less, Mr. Lightfoot, and I relied considerably upon his advice in the matter.

Q. Where did the road begin and where did it end?

A. I have not that record in convenient form.

The Special Master: What county was it in?

Mr. McClintic: It was in Highland, Page and Pocahontas Counties, West Virginia, as a matter of fact, your Honor.

The Witness: We also relied on Crozet's report.

By Mr. McClintic:

Q. What did the Acts say about this road, if you remember?

A. I don't remember.

Q. The next item you have charged is the Trans-Alleghany Lunatic Asylum at Weston, $125,000. Where did you get that sum of $125,000 from?

A. From the reports of the Auditor of Public Accounts, 1858, 1859 and 1860.

Q. What do they show?

A. Those payments of $125,000.

Q. To whom?

A. To the Trans-Alleghany Lunatic Asylum.

Q. To differentiate again, what do you mean by the Trans-Alleghany Lunatic Asylum in that connection?

A. What do I mean?

Q. Who got the money? 332

A. I couldn't say.

Q. You looked no further than the published reports on that item?

A. No further than that, except with regard to the last item of $50,000 we had to refer to the ledger.

Q. What did the ledger show with reference to that?

A. The ledger showed $50,000 charged to the Trans-Alleghany lunatic asylum at Weston.

Q. Why did you have to refer to the ledger for one item and not the other?

A. Because we did not know from the published report of 1861 whether it came in the period between October 1st and December 31st, or after the 1st of January.

Q. You were in West Virginia, were you not?

A. I was.

Q. You looked at certain auditor's reports there, did you not?

A. Yes, sir.

Q. Did you not see on the auditor's report of the restored government an item by which they recovered into the Treasury $27,000 of that sum?

A. I don't recall such an item; no.

The Special Master: You mean into the Treasury of Virginia?

Mr. McClintic: Yes, sir; the restored government, the real State of Virginia.

The Special Master: The Pierpont government?

Mr. McClintic: Yes.

Mr. Conrad: The Government at Wheeling.

The Special Master: Are they identical?

Mr. McClintic: Yes; when you speak of one you mean the same thing, the restored Government or the Pierpont Government. It had a little trouble getting to Richmond, but it got there sooner or later. 333

The Special Master: It was ambulatory.

Mr. Anderson: There was a race for that money, was there not?

Mr. McClintic: No; Virginia got it.

By Mr. McClintic:

Q. The next item is the Abbs Valley & Tug Road. Do you know that that road is wholly in West Virginia?

A. I have not the information regarding these roads in this division in convenient form for reference. As we found the appropriations, we made a note as to where the roads ran, and that was not tabulated in such form as to make convenient reference at this time. If it is necessary to have it, I can have it later.

Mr. Spooner. You could not have had time enough to make an exhaustive accounting here, could you?

A. We thought we had devoted sufficient time. We did not anticipate these questions.

By Mr. McClintic:

Q. I find charged there, below, the Brandonville, Kingwood and Evansville state road. Have you anything on your accounts to show whether that was a stock company or a direct state appropriation?

A. No, sir; I think, however, it was a direct state appropriation, because the money was paid through the auditor of public accounts, or the evidence of the payment is in his reports.

Q. Do you know? 334

A. I do not, positively.

Q. Further down there somewhere—I have a memorandum on the outside that it is page 3 of the second section—is the Clarksburg and Buchanan road. Do you know whether that was a stock company or a direct appropriation?

A. I do not.

Q. You charge on the same page the Coal River Bridge Company. Was that a company or a direct appropriation?

A. I can't say.

Q. That charge is $3,000. You charge on the same page the Coal River Navigation Company. For what were those appropriations, $96,000 total, made, stock or direct appropriation or loans or gifts?

A. I can't say.

Q. You made no differentiation?

A. If they were charged to the account of the internal improvement, on the Board of Public Works, we accepted them as payments.

Q. The State of Virginia has filed here a great number of acts—that is, a memorandum of acts. That act says that was for stock. Did you look at that compendium of acts, at all?

A. I did not compile that.

Q. You had nothing to do with the filing of those acts and know nothing about them?

A. No, sir.

Q. You do not know whether this is a company or a direct charge?

A. No, sir.

Q. All you know is that some book showed so much money 335 charged?

A. So much money charged.

Q. Was that an official report or a book?

A. It is the ledgers A and B of the Board of Public Works.

The Special Master: A manuscript book?

A. Yes, sir.

By Mr. McClintic:

Q. There are a number of these bridge companies, the Buckhannon Bridge Company and others, marked on here as companies. Does the same information apply to those?

A. Yes, sir; we followed the names used in the books that we had for reference, that we have referred to.

Q. You charge here Gauley bridge, $1,419.45.

Mr. Anderson: What page is that on?

Mr. McClintic: It is page 4 of the second section.

By Mr. McClintic:

Q. You also charge Gauley bridge under the James River and Kanawha Company. Are both charges correct, or why are the two charges made?

A. I believe the bridge was destroyed and rebuilt, and they were charged in different places. One is on the James River account, and later on, among the Board of Public Works accounts.

Q. Did not the bridge belong to the James River and Kanawha Company?

The Special Master: Which was that; Gauley bridge?

Mr. McClintic: Gauley Bridge. 336

A. I don't know.

Q. When you charged it under the James River and Kanawha Company, did it not belong to it?

A. I think very probably it did.

Q. Was not that the first charge?

A. I think it was, but I have not the date of that charge, so I can't state positively.

Q. You charge on the same page, 4, Bank of Fairmount, $50,000. What is that?

A. I believe it was a purchase of the bank stock by the literary fund.

Q. How did you happen to know this was stock and the other things which accompanied it were only direct appropriations? How did you happen to differentiate between the two?

A. The State was not exactly building banks and it was building roads.

Q. Well, were they building roads in some cases where there were companies, or were they building navigation companies?

A. Making appropriations and buying stock of these various companies, the same as they bought this stock.

By Mr. Carlisle:

Q. You say they bought stock in that bank?

A. I believe they did; yes.

Q. And you have charged it in your account as a direct expenditure of money in West Virginia?

A. Yes, sir; because we could not determine what became of the stock. 337

By the Special Master:

Q. Where was the bank located?

A. In Fairmont, West Virginia.

Q. You say you could not determine what became of the stock?

A. Yes; the record is not clear as to what became of the stock.

Q. Is that the criterion?

Mr. Spooner: Does that make any difference in the nature of the original transaction?

By Mr. McClintic:

Q. Did the record show what became of the stock of the various other companies?

The Special Master: What is Fairmont; a town in West Virginia?

Mr. McClintic: It is a town in Marion County, up in northwestern West Virginia.

Q. You charged below there $106,800 to the Guayandotte Navigation Company. What was that; a stock transaction, or a direct appropriation or a loan?

A. I don't think it was a loan. I think it was a direct appropriation. It may have been a purchase of stock.

Q. Did not the books show whether the appropriation was for purchase of stock, or for loans?

A. Yes; but we did not make any distinctions between the various classes of payments to improvement companies, etc.

The Special Master: That is, you made no distinction in your account whether the investment was direct or indirect? 338

A. No, sir.

Mr. Spooner: Whether the money was expended in the construction of a railroad or the purchase of stock in a corporation.

The Special Master: Yes; that is what I mean by direct and indirect. What you are getting at now is the basis on which this account is made up?

Mr. Carlisle: Yes, sir.

The Special Master: Whether it is satisfactory or otherwise is to be determined later.

By Mr. McClintic:

Q. On page 6 there is the Kingwood and West Union turnpike. Do you know whether that was a corporation or a direct appropriation?

A. I do not.

Q. On the bottom of that page 6 is Lewisburg Law Library. You charge $4,150. Why did you charge that?

A. I believe it was an appropriation made by the State for the purchase of books for that library in 1836, if my recollection serves me.

Q. Do you regard that as a direct expenditure in the State of West Virginia?

The Special Master: Where is that located in West Virginia?

Mr. McClintic: The library was for the Supreme Court of Virginia. It was a Supreme Court on wheels.

Mr. Conrad: Oh, no.

The Special Master: I mean where is it located geographically? 339

Mr. Conrad: In Greenbrier county, West Virginia. It was an improvement for the legal mind of West Virginia.

Mr. McClintic: I suppose you will charge up direct to us the time the court stayed over there and said they were giving us instruction?

Mr. Harrison: If that is of any account, we expect to do it.

By Mr. McClintic:

Q. On page 7 you have charged $7,000, the Louisa Fork of the Sandy River road. Please tell us what that is?

A. The road?

The Special Master: Do you mean where the road is located?

Mr. McClintic: Yes.

A. I would think from that description that it was on the Louisa Fork of the Sandy River.

Q. Where is the Louisa Fork of the Sandy River?

A. I can't tell you.

Q. Is it not wholly within the States of Kentucky and Virginia?

A. I don't know at this time. I have satisfied myself that at that time that it lay within West Virginia.

Q. Were you as well satisfied of all the other items as you were of that?

A. I think I can say I was.

Q. Were you as well satisfied of that as you were of all the other items?

A. I think so.

Q. You charge there a road called the Morgan County road 340 from Bath to St. John's River, $2,500. Where did you get that information?

A. I don't recall at this time.

Q. Did that appear in that form or shape in any way on any book?

A. It appeared in the Board of Public Works ledgers A and B. page 108 and page 239.

Q. Does the record show that money went to that purpose by that record?

A. The record shows that: yes.

The Special Master: Do I understand there is an entry that indicates an expenditure for that purpose?

A. Yes, sir.

By Mr. McClintic:

Q. Does not an Act of the legislature show a loan of $2,500 to the town of Bath?

A. I don't know. There is such an item in your accounts, and I thought that probably that offset this, but I don't recall having seen the loan to the town of Bath. It may be there.

Q. Does not the act of the legislature authorize the loan to the town of Bath; or did you ever look at the Act?

A. I did not look at the Act with regard to that.

Q. Did not the ledger and journal of the Internal Improvement Fund show that the town of Bath got the $2,500?

A. I don't recall.

Q. You simply don't know?

A. I don't recall at this time that it did; no.

Q. You charge there next, Mr. Potter, the Monongalia Nav- 341
igation Company, $8,180. When do you charge the first item?

A. In 1822.

Q. How much?

A. $5,520.

Q. Is that an appropriation made for the purpose of buying stock or a direct appropriation; or do you know?

A. I don't know.

The Special Master: I understand that to be true of all the items, that he cannot differentiate;—that is, with the information he has before him now. That is correct, is it?

A. Yes, sir.

By Mr. McClintic:

Q. On the top of the next page I find an item of Moorefield and Alleghany turnpike, $8,779.78. I also find an act filed by counsel for Virginia here, that that stock in that road was totally given to the county of Hardy in 1858. Were you aware of that fact when you put that item in?

A. I was not.

The Special Master: The county of Hardy?

Mr. McClintic: Yes, sir.

The Special Master: Which State is that in?

Mr. McClintic: West Virginia. The Act which they filed here shows that it was given to the county.

By Mr. McClintic: 342

Q. On the next page there is an item, Northwestern Bank of Wheeling, $450,000. Please state what that is?

A. I cannot state. The record is not complete, as to whether it was for stock, but I believe it was for stock.

Q. You mean bank stock bought by the State of Virginia?

A. Yes, sir.

The Special Examiner: In what respect is the record incomplete in that regard?

The Witness: I made no description of these items. I merely took them from the books under the drawings. The account said Northwestern bank. I entered that under that heading, the total item, knowing that that bank was in West Virginia.

By the Special Master:

Q. There was nothing on the book you saw that indicated exactly what the money was for?

A. If we had checked back to the journal we could have told about that.

Q. But did you check back to the journal?

A. Not in all cases.

Q. But I mean in this specific instance?

A. I don't remember.

By Mr. Carlisle:

Q. Did you or not find upon the books that prior to the 1st of January, 1861, the Commonwealth of Virginia had sold a large amount of that stock and received the money for it?

A. I do not recall that circumstance. 343

Q. You cannot answer as to that?

A. No, sir.

By Mr. McClintic:

Q. You have an item on there, the last item, $24,908.67 in that account.

Mr. Spooner: If he had it, would it have made any difference in his account?

The Witness: Probably I would have put it in.

Mr. Spooner: Probably is rather indefinite. You have not put in a great many similar things. Why would you have put it in?

The Witness: If the State had sold its holdings in the Northwestern Bank, I would have allowed that credit. That is the theory on which these accounts are constructed, that any disposition for which money was received would work a reduction.

Mr. Spooner: If the books showed that they did sell that stock for so much money, was it a proper examination of the books that you made, if you say you do not know it?

The Witness: I think I would have given it if it was there.

The Special Master: What you intended to give was the balance that stood against the investment in 1861, was it?

The Witness: January 1st, 1861; yes, sir.

The Special Master: That is, your intention was to give the investment as it stood at that time, and you so gave it?

Mr. Spooner: That was not what the order called for; it was moneys expended in West Virginia.

Mr. Conrad: Suppose your accounts that have been offered in evidence here show the fact that you do give credit for that very sale of stock, would that affect the final result you have reached? I say, if the accounts you have rendered here, that have been put in evidence, do show the fact of the sale of this stock, and that you have given credit for the proceeds of that sale? 344

Mr. Spooner: Our accounts?

Mr. Conrad: Yes.

Mr. Spooner: We have not put them in evidence.

Mr. Conrad: You gave them to us and we assume from that that you are intending to put them in evidence. I am not talking about his accounts, but your accounts.

The Special Master: If his accounts show that the stock was sold and credit given, the question is whether you do not get the same result.

Mr. Conrad: Yes. He has simply forgotten it.

The Witness: I cannot say positively about that item.

By the Special Master:

Q. If your accounts show it, and Virginia is given credit for it, of course it is the same thing as if it was in this item. Of course it is not very material whether it appears right here or some other place.

Mr. McClintic: Does your account anywhere show any credit of that kind?

The Witness: Not that I recollect.

345

By Mr. McClintic:

Q. You do not think that your account shows anywhere any credit of that kind?

A. I don't think it does.

Q. Did you not take the original investment that you found from the books and charge West Virginia with that amount?

A. I cannot state positively, but that was the basis on which that was entered there.

Q. I started to ask you when I was interrupted whether as to the item of $24,908.67, which you marked "Not on annual report 1839", Virginia paid a cent of that?

A. If you will allow me to refer to the receipts I think I can answer that.

Q. Certainly.

The Special Master: That is, does that represent an actual investment?

A. (Referring to memorandum) I do not find the record among my papers. I have it somewhere, but I cannot answer that question now.

Mr. McClintic: You do not know what that "Not on annual report" means?

A. I think it had something to do—no, I do not know.

By the Special Master:

Q. Have you got all your notes here?

A. I had them here.

Q. But you are not able to put your fingers on that point?

A. They are very voluminous and I cannot turn to that. 346

Mr. McClintic: I wish you would look that up and tell me.

The Special Master: I was going to say, if there are any of these items you want to have him look up in his notes, we had better not take time to do it now; but he can make a note of everything of that kind and look it up between now and tomorrow morning. We will not wait for those things unless it disturbs the continuity of the cross examination to go ahead with something else.

Mr. McClintic: No, sir; it will not disturb me.

By Mr. McClintic:

Q. On page 11 you charge a road called the South Branch and Kitterman's to Hardy County. Is that road wholly in West Virginia?

A. I believe it is.

Q. Do you know that it is?

A. I would not have put it in there if I had not been pretty sure of it.

Q. Your judgment was that it should be put in there, was it?

A. It certainly was.

The Special Master: What county do you contend it is in?

Mr. McClintic: It is in Harrison county, Virginia.

Mr. Conrad: There is no such county in Virginia.

Mr. McClintic: I mean Rockingham County; I was thinking of Harrisonburg. It is in Hardy County, West Virginia, and Rockingham, Virginia. It is better known as Brock's Gap. 347

Mr. Anderson: That is another road. That is not Brock's Gap.

The Special Master: Do you remember how you ascertain that

fact when you made your statement about that road and its location; that is, from whom or from what you got your information?

The Witness: We had several maps there, and one map that we received from the library in Washington. We located these various roads and charged them up accordingly. I did not make an index showing the locations of the direct West Virginia charges, but made an index of those crossing the line. But I do not think there would be any question about these roads located in West Virginia, I did not think so, and so we did not prepare that index.

The Special Master: And it is impossible for you now to put your finger on the original memorandum from which you reached that result?

The Witness: Yes.

Mr. McClintic: Dd not that road have the proper title of the South Branch of the Potomac to Brock's Gap and Rockingham county?

Mr. Anderson: There is such a road as that.

The Witness: I think that is the road; but somewhere in the report we found a record of Kitterman's and located it in West Virginia.

Mr. McClintic: On page 13 I find the Williamsport Turnpike, $5,130.65. Are you aware of the acts of Virginia filed here which give the stock in that road to Wood County?

The Witness: No, sir. 348

Mr. Anderson: What is the date there?

Mr. McClintic: 1858, I think, but I would not be positive.

Mr. Harrison: To whom does the act give it?

Mr. McClintic: To Wood County.

By Mr. McClintic:

Q. To go back to one question on the first page of the whole account, do you know, in the case of the Berryville and Charleston turnpike, whether or not that road was sold under a deed of trust given by the company?

A. I do not.

Mr. Anderson: It was.

Mr. McClintic: I will ask Mr. Potter.

The Witness: I don't know.

By Mr. McClintic:

Q. You do not know anything about what the books showed as to charges?

A. I do not.

Q. Did the books make any difference between the last charge of $7,236.97 and the other charges?

A. I cannot say at this time.

Mr. Spooner: A trust given by the corporation?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Were the items taken from the same book thereunder?

A. No; the item in 1858 was taken from the Commonwealth ledger.

Q. Did you look at the journal of the Commonwealth to 349
see what that charge was for?

A. I think probably we did not. I don't remember.

Q. On page 15 you have a charge there called sundry expenses, $339.91. On what theory did you charge those to West Virginia?

A. Journal B, page 532. In the first place, we find them entered in the annual reports of the board of public works, and we located the expense as in some particular county. There were many others which we located in Virginia counties which we left out. Such as we could locate in West Virginia counties were charged.

The Special Master: What was the nature of the expenses?

The Witness: In connection with the inspection of road by the board and things of that kind.

By Mr. McClintic:

Q. Did you not charge under the head of 4-D a whole lot of items for inspections as ordinary expenses of the State Government?

A. Such inspections as we could not locate within particular counties, we charged up as ordinary expenses; but all items that we could locate we charged direct. These items may not have been ordinary expenses in one sense; if they were applied to the inspection of a particular road which we could locate, I think it was quite reasonable to charge it.

Mr. Spooner: How many different kinds of ordinary expenses have you been governed by in distributing these items?

The Witness: I think my previous answer explains that. 350

Mr. McClintic: And these items which you put into ordinary expenses and charged as such, did you exclude all the items for Virginia counties?

The Witness: All direct charges. Items we could locate the same as these, we did so charge, and excluded them from the ordinary expenses of the board of public works.

The Special Master: That is, where the expenses appeared to be localized by the books, you left them out, and where they were general in their character, you made the charge of ordinary expense?

The Witness: Yes, sir.

The Special Master: The only distinction between the two being on the books. You saw where some of them went, but you could not see where the others went, and therefore made a general charge?

The Witness: Yes, sir.

Mr. Conrad: Governor Wise's salary was an ordinary expense, but when he went to Charlestown to command the troops at the John Brown raid, that, too, was just such an expense.

Mr. McClintic: We thought the hanging of John Brown on West Virginia soil was a permanent improvement to West Virginia.

Mr. Conrad: It was. Jefferson County to-day is the finest 351
county in West Virginia.

The Special Master: I suppose that might raise the question as to whether I have a right to localize it or spread it generally over the whole country.

By Mr. McClintic:

Q. We find on the same page a charge of interest on the bonds of the city of Wheeling of $30,627.45, and you give credit for $15,115.64. On what theory of State expenditure did you charge that to West Virginia?

A. On the direct instructions of that paragraph of the decree which says "All moneys expended within the counties of West Virginia."

Q. Was money paid on bonds given by a municipality of West Virginia, which the State had guaranteed, money spent within West Virginia?

A. It was spent for that purpose, yes. Wheeling was in West Virginia.

Q. Yes; Wheeling is in West Virginia, and Wheeling is a solvent municipality, is it not, or was it not?

A. It was.

Q. Was and is, as a matter of fact?

Mr. Anderson: I don't know whether it was or not.

Q. (Continuing) Yes; it was and is. Did you look to see whether that same money had ever been repaid to Virginia?

A. I did not look beyond 1860.

Q. You did not follow the books to see whether items of 352
that kind owned by an independent municipality had ever been repaid to the State or not?

A. Not after 1860.

Q. You were satisfied to make a charge and then not look to see whether it was paid afterwards or not?

A. I don't think it was paid, because it would have appeared on the auditor of public accounts' ledger, if it had been, and I did not notice it there.

Q. If you had looked don't you think you would have found it was paid?

A. I don't know.

Q. It was no part of a State expenditure, but as a matter of fact,

he sum with interest was paid to the State of Virginia in 1867, and he State of Virginia took it and accepted it.

Mr. Conrad: What part of the State of Virginia?

The Special Master: He has not taken into account any of those ince 1860.

Mr. McClintic: We took the position, that it was his duty to see f that account had ever been paid.

The Special Master: That is open to you to show.

Mr. Harrison: If that is your theory you can put it in your evidence to show it.

Mr. McClintic: The evidence can be had from your own books.

Mr. Harrison: Well, let it go in.

Mr. McClintic: Why did you charge to us the Harpers' Ferry Raid, $174,684.79; upon what theory did you charge that?

The Witness: Primarily— 353

Mr. Harrison: State what it is for first.

The Witness: Claims for subsistence, quartermaster's stores, pay of soldiers, damages, medical department, and miscellaneous items incident to the maintenance of certain troops in Harpers Ferry, which is in West Virginia.

By Mr. McClintic:

Q. Why did you charge it, that is the question I asked?

A. Because it was an expenditure in West Virginia and I had an opinion of the counsel of Virginia.

Q. That is what I expected; I suppose that was the reason you did it.

The Special Master: That is, he was so instructed.

Mr. McClintic: Yes; I have no doubt that is the fact.

Mr. Conrad: I suppose that was proper.

The Special Master: I do not understand that they criticised the propriety of instructing him, although it may be that they do contest the propriety of the item.

Mr. Spooner: I do not criticise the propriety of his obeying the instruction.

Mr. Carlisle: But we claim that the instruction was erroneous.

Mr. Spooner: We want to be heard briefly on the propriety of the instruction.

The Special Master: That will come up later.

By Mr. McClintic:

Q. There is another item, "payment to West Virginia counties for school purposes, $863,278.26," at the bottom of page 15. Why did you charge that to this account? 354

A. Because they were payments to West Virginia counties, as shown by the following schedules.

Q. Did you charge that of your own volition, or was it by instruction?

A. I don't remember of referring that matter to counsel; I think it was of my own volition.

Mr. Harrison: Say whether or not these charges, whether made by instruction or not, met with your approval?

The Witness: This Harpers' Ferry raid did meet my approval. This certainly did, because I think the original charge originated with me. It was the intention to make the charge.

Mr. McClintic: Do you think it makes much difference whether it met with his approval?

Mr. Harrison: It might; we will see later on.

The Special Master: You want it for what it is worth, anyway?

Mr. McClintic: Counsel approved these directions.

The Special Master: I understand that both counsel and auditor concurred in their propriety.

By Mr. McClintic:

Q. Mr. Potter, did you take any account in your statements anywhere of the dividends paid by any of the banks in West Virginia to the government of Virginia—banks such as the Northwest[illegible]?

A. They are not included in these charges.

Q. Anywhere; in any account?

A. In none of our schedules are they included.

Q. Are what you might term the bonus stocks, what the statute terms bonus stocks, some sort of a license, included in any of your accounts? 355

The Special Master: What is that? I don't understand that.

Mr. McClintic: What the statute of Virginia termed a bonus stock which is really a license to do business, as I understand. Were they included in any of your accounts?

The Witness: Not that I know of.

The Special Master: What were those licenses issued by the State of Virginia?

Mr. McClintic: The State of Virginia exacted some sort of a toll from the banks for doing business in some shape, in the shape of a bonus of stock or license in some form. I cannot exactly state what it was now.

The Special Master: In other words, they required some special consideration from them for the exercise of their franchises?

Mr. McClintic: Yes, sir.

The Witness: Do you want the information about the Mountain Lake turnpike that you asked me before lunch to give you?

Mr. McClintic: Yes, sir.

The Witness: The first information we got about that was from an ordinary map, which showed a small lake near Walker's Moun-

tain, and we pursued the research further, and found that there was a town called Mountain Lake, or there is a town called Mountain Lake, in Giles County, and going further, to the old 356
nine section map, a copy of which is in the land office at Richmond, it shows a turnpike from this little lake, which we have decided is the Mountain Lake referred to, across the mountain to Salt Sulphur Springs, in Monroe County.

By Mr. McClintic:

Q. What distances, respectively?

A. The distance is 20 miles; and the post route map was scaled, and as near as we can get it on a map of that kind we estimate that it is ten miles in each State.

Q. Does the act show where that road was to begin and end?

A. I have no recollection in regard to the act authorizing it.

Q. How do you know where it began and where it ended?

A. I have just explained to you the theory on which we decided where it began and where it ended.

Q. Your theory was that you found two things by that name and jumped to that conclusion?

A. I don't think we jumped to that conclusion. It was a place called Mountain Lake.

Q. A place called Mountain Lake, in Giles County?

A. Yes.

Q. And a place called Salt Sulphur Springs in Monroe County?

A. Yes, sir.

Q. And you decided the road went between those two points?

A. There is a road between those two points, and we decided that was the road referred to. 357

Q. Do you know that that money was expended on that road, or that any money was expended on that road?

A. I cannot state positively it was.

Q. You found no report showing that it was, did you?

A. Not that I recall.

Q. You wished also to ask me something about Covington and Ohio, sections 19 and 20?

A. Yes, sir; sections 19 and 20. I asked you the distance, I believe.

A. The distance was 3,650 feet from the beginning of section 19 to the entrance of the tunnel; and it was 2,234 feet from the entrance of the tunnel on the Virginia side to the State line. It was 2,241 feet from the State line to the end of the tunnel, and it was 2,375 feet from there to section 21, section 20 lying somewhere between those two poles. We are told by H. C. Whitcomb, formerly assistant chief engineer—

Mr. Anderson: Chief engineer.

A. (Continuing) Chief engineer of the Chesapeake & Ohio Railroad, that the West Virginia end of this tunnel was bricked, on account of the character of the soil through which the tunnel was driven. That end of the tunnel is longer, by about 200 feet, than the Virginia end of the tunnel. The West Virginia approach is about 1,300 feet shorter than the Virginia approach; but the character of the land is more precipitous at the West Virginia end than at the Virginia end, and consequently there are greater cuts at the Virginia end, and we allow the additional expense of 358
bricking that West Virginia end, to offset the greater length of the approach on the West Virginia side, which is as near an estimate as we could make.

By Mr. McClintic:

Q. That was the statement of Major Whitcomb that you are basing that on?

A. Only with respect to the bricking. The other information we obtained from this profile.

The Special Master: What is that—the profile (indicating)?

Mr. Anderson: Yes, sir.

Mr. Harrison: This is a copy of the original profile?

Mr. Conrad: Show it to the judge.

(The profile referred to is examined by the Special Master and explained by the witness to the Special Master.)

Mr. McClintic: I want to ask you one other question on that $863,000. Where did that fund come from?

Mr. Harrison: Do you mean the school fund?

Mr. McClintic: Yes.

The Witness: We obtained our information from journals A, B and C of the Literary Fund.

By Mr. McClintic:

Q. Where did the money come from; where did the literary fund get it?

A. I don't know; I think it was received from the general funds. 359

Q. From taxation, or in what way?

A. I believe the literary fund received the capitation tax, and certain interest on investments.

Q. Do you know how much money it received during that period in which that $863,000 was being charged, from capitations?

A. No, sir.

Q. Do you know how much it received from investments?

A. No, sir.

Q. Did you make any effort to find out those things?

A. I did not consider it necessary for the purpose of this —

Q. Just answer yes or no.

A. No, sir.

Q. You do know, though, that part of it came from capitations and part of it from investments?

A. That is my recollection, and I believe I am right.

Q. And any come from any other source?

A. They may have appropriated certain sums to the literary fund during that period. I do not recall.

By Mr. Carlisle:

Q. I see from this statement that you charged $863,000 and some dollars directly to West Virginia on account of money expended there for educational purposes. That is correct, is it?

A. That is correct.

Q. When you come over to the ordinary expenses of the 360
State government of Virginia, the whole State under another clause of that decree, you charge the money expended by the State of Virginia for education purposes within the limits of what is now the State as ordinary expenses, do you not?

A. No; all the expenses through the literary fund were eliminated.

Q. Well, the University of Virginia and the Military School and some other things is all you have taken there.

A. Well, general educational institutions, colleges and things like that, yes; but not for the education boards, the boards in the various counties.

Q. What distinction do you make between those two?

A. These same payments were made to the counties of Virginia and we excluded those. Payments similar to those were made to Virginia counties.

Q. What I am trying to get at is this. The expenditures for educational purposes in Virginia belonged to the ordinary expenses of the State; why did not expenditures for education purposes for West Virginia belong to the ordinary expenses of the State?

A. We did not take all money for educational purposes in Virginia into the ordinary expenses of the government.

Q. You took some of it?

A. But all moneys paid direct to the counties were excluded from this account?

Q. In Virginia? 361

A. In Virginia.

Mr. Conrad: All universities you refer to belonged to the State of Virginia.

Mr. Carlisle: I understand that; but the point I wanted information on was this. If that money expended here for a similar purpose, that is for educational purposes, belonged to the ordinary expenses, why did not money expended in West Virginia for educational purposes also belong to ordinary expenses, so we would be charged not directly with the whole amount of $863,000, but our just share of it, as a part of the ordinary expenses of the State of Virginia?

The Special Master: Let us see if we understand what the witness has tried to do. I understand the witness has stated that items of this character, applicable to Virginia, do not enter into the accounts as a part of the ordinary expenses that are charged?

The Witness: That is correct.

The Special Master: So that while they are put in here as items disbursed in West Virginia, items of similar character do not appear in the ordinary expenses account, and none of these items occur in the charge that makes up the ordinary expense.

Mr. Harrison: That answers his question.

Mr. Carlisle: In other words, any money expended by the State of Virginia for common schools, we will say, inside of the territory now constituting the State of Virginia was not charged in this account either as ordinary expenses or otherwise. Is that what you mean to say?

The Witness: Yes, sir.

The Special Master: That is what I understood him to say. 362

[*Vol. 5, May 6, 1909. Cross Examination of A. G. Potter.*]

Mr. McClintic: There are sundry matters that I asked you to look up and be able to testify about this morning. Are you in a position now to answer in regard to any of those?

The Witness: I am in a position to reply regarding the road from South Branch.

The Special Master: What exhibit does that relate to?

Mr. McClintic: 3, I think.

The Witness: C-1.

The Special Master: And what page?

The Witness: Page 15 of the new paging. South Branch and Kitterman's, $1,400.

The Special Master: South Branch and Kitterman's?

The Witness: South Branch and Kitterman's to Hardy County.

The Special Master: The question was whether that was all in West Virginia?

The Witness: Yes, sir. 391

The Special Master: What have you found?

The Witness (apparently reading): Journal B, page 753, shows $1,400 to William Seymour for road from South Branch to Brocks Gap, under the Act of the 7th of February, 1850, Chapter 95, section 6. This is posted to his account in Ledger A, page 140, and transferred to Ledger B, page 265, in 1862. The $1,400 is then transferred by Journal D, page 181, 1865, to the account headed "Road from the South Fork of the South Branch of the Potomac near Breaks, by way of Kitterman's, to the Moorefield North Branch Turnpike in Hardy County at Petersburg." Petersburg is in Hardy County, west of the South Branch of the South Fork of the Potomac. I should say it is in Grant County, West Virginia, split off from Hardy.

Mr. Anderson: That shows both termini to be in West Virginia?

The Witness: Yes, sir.

Mr. McClintic: That is dated when?

The Witness: The last entry is made in 1865, transferring it to the account under this head.

The Special Master: Have you any other items which you were asked to look up, which you can now testify to?

The Witness: No, sir.

By Mr. McClintic:

Q. What was the reason for transferring those in 1865, so far as the books would show you anything?

A. I cannot say what the reason was.

Q. As a matter of fact, is not the road of the South Fork of the South Branch of the Potomac River to Petersburg and Hardy County entitled to a charge of $900 loan, and is not that a 392
wholly different road from the one you are speaking of?

A. I do not think it is, because the entry starts with an act of 1850, under the name of South Branch to Brock's Gap, and was later transferred to this other name.

Q. When we know that Brock's Gap is in Rockingham County and the South Branch is in Hardy and Pendleton Counties, would you not suppose the entry made when the road was built would be better than the one made fifteen years afterwards?

A. I don't know; I am sure I don't know whether it would or not. We would have to know more about the facts, and the facts beyond what I have stated here are not ascertainable from the books.

Q. Well, it is ascertainable from the books that when the road was started and when they knew what was doing they had it in one place, and then fifteen years afterwards it was changed to another place?

The Special Master: That is, there is an inconsistency?

The Witness: Yes; the entry indicates that.

Mr. Conrad: The road may have been built to extend much further than it actually did extend, and as it was constructed, it was between two points, the eastern point of which may have been further than provided for in the charter.

Mr. McClintic: What evidence have you of that? Are you testifying?

Mr. Conrad: No; I am not testifying; I am explaining an 393
*a*bvious solution of the matter. Here is a record of West Virginia which shows the terminus of that road to be within that State.

Mr. McClintic: Where is the record and when was it made. This road connects at Brock's Gap.

The Witness: This is from the Board of Public Works. I merely said that this information was taken from the Board of Public Works ledger.

Mr. McClintic: Of what State?

The Witness: The State of Virginia.

The Special Master: Have you any information except what you get from the books?

The Witness: No, sir.

Mr. Conrad: Will you please give me the last date you read.

The Special Master: If that is to be supplemented by oral testimony that will come from another source, evidently. Is there anything further on that?

Mr. McClintic: No, sir.

[*Vol. 5. May 6, 1909.*]

JOHN B. LIGHTFOOT, JR.

was called as witness for the plaintiff, and being first duly 408
sworn, testified as follows:

By Mr. Anderson:

Q. What is your profession or occupation, Mr. Lightfoot?

A. I am a lawyer.

Q. How long have you practiced law?

A. Nearly five years.

Q. Please state to his Honor your connection, if any, during the last year or eighteen months, with any investigation or accounts which have been had in connection with this case?

A. When the expert accountant for the State of Virginia came to Richmond I was employed through the Attorney General to assist him by such means and methods as circumstances at various times might require, largely in connection with collecting and securing for their use the various documents of the State, as we might

find them at different places. When Mr. Potter, the accountant, came and brought with him his force of assistants, from the time that they arrived until they left I was with them constantly, connected with their work of accounting. I am not personally an accountant, so that my connection with the accounting work has been only that of an assistant under the direction of Mr. Potter. Incidentally to the existing work with him at the request of the Attorney General, I made an independent investigation into the expenditures within the boundaries of West Virginia, under the clause of the decree referring to that matter. It was not
my intention at the time to make anything more than a 409
memorandum for the use of counsel so far as it might be needed. However, the report was made the nature of an account, because that was the only way in which I could make it out so that it would serve its best purpose; but the report does not purport to be and is not the report of an expert accountant. It is my observation and my conclusion from the figures which I found in the published reports of the Board of Public Works, the published reports of the auditor and second auditor in the documents of the House of Delegates and in such original books of entry as the Board of Public Works, of the Auditor's office and of the second Auditor's office, and of the various internal improvement companies as I found occasion to examine. That report I have here.

Q. From your examination did you make up a statement or a report as to the expenditures within the counties now constituting West Virginia, and if so, what period was covered by that report?

A. I covered the period between 1820 and December 31, 1860.

Q. Have you a copy of that report?

A. I have one before me.

Mr. Anderson: A copy of this, if your Honor please, was left by me at the office of the Attorney General of West Virginia on the 7th of October last, and he acknowledged it afterwards to me.

Mr. McClintic: Yes, sir; we have a copy.

By Mr. Anderson:

Q. From what source did you get the figures or statement 410
of fact made in that report, Mr. Lightfoot?

A. The statement of facts and figures shown there were obtained from the published reports of the Board of Public Works, as contained in the separate volumes of the reports of the Board of Public Works, and also as contained in the documents of the House of Delegates; also the reports of the Second Auditor; also the original manuscript journal of the Board of Public Works; also from original maps of internal improvement companies; also from the reports

of C. Crozet, Chief Engineer, under the Board of Public Works, and from the original books of entry in the Second Auditor's office and in charge of the corporation commission which deal with internal improvement matters.

By Mr. Spooner:

Q. Does this differ from Mr. Potter's report?

A. To a slight extent; yes, sir.

Q. Will you point out the difference?

Mr. Anderson: The differences will be pointed out as we go along.

The Special Master: Do you want to use the whole report or only such parts of it as relate to discrepancies between it and the report of Mr. Potter?

Mr. Anderson: We will file the whole report.

Mr. Conrad: We put it in, in large part, because it does differ from Mr. Potter's statement, to show two independent lines of inquiry.

The Special Master: Have you a duplicate of it, so that I can follow along with it?

Mr. Harrison: You will be furnished with a duplicate, 411 your Honor.

The Special Master: In order to follow it intelligently, I must have a copy as we go along.

Mr. McClintic: What page do you begin with?

Mr. Anderson: The report is not paged, but we begin on page 4.

By Mr. Anderson:

Q. Mr. Lightfoot, was your report prepared before Mr. Potter's was completed, or afterwards?

A. My report was prepared before Mr. Potter's was completed, according to my memory. This is dated June 4th. I corrected this report.

Q. Was it revised?

A. This report was revised subsequent to the time it was originally presented; yes, sir.

Mr. Spooner: You say you corrected that report. Just finish that answer.

A. I don't understand.

Mr. Harrison: What did you say about subsequently correcting the report?

A. The report as first put in was subsequently revised as to a number of points which developed later, that needed revising.

Mr. Conrad: Revised by you?

A. By me, personally.

Mr. Harrison: And handed to me?

A. Yes, sir.

The Special Master: What have we here; the complete 412
revision?

A. Yes, sir.

Mr. Anderson: Yes, sir; that is his revised report. As will be seen by counsel and by Master, Mr. Lightfoot has adopted a somewhat different arrangement from that adopted by Mr. Potter.

By Mr. Anderson:

Q. From page 4 to 6 you have a statement of expenditures by the Commonwealth of Virginia within the boundaries of West Virginia for internal improvements, lunatic asylums, banks, law library, and miscellaneous items, since any part of the debt existing January 1st, 1861, was contracted, and the first statement you have here is a statement the caption of which is "Expended through the Board of Public Works. Joint stock and State turnpikes lying wholly within West Virginia." The first item is the Abbs Valley and Tug Road. Do you remember whether that was a joint stock company?

A. I do not. I took no note of the different internal improvement companies to which subscriptions were made for the joint stock or to which payments were direct by resolution or authority of the special act. I only took note of the fact that the money was spent.

Q. Is that road wholly within West Virginia?

A. This road is wholly within West Virginia, according to my report.

Q. You have the item $4,450, as expended by the Commonwealth on that road?

A. Yes, sir.

Q. Is that a correct interest? 413

A. It is.

Q. Then the Beverly and Fairmount road, $75,384.65. Does that road lie wholly in West Virginia?

A. It does.

Mr. McClintic: That is admitted.

By Mr. Anderson:

Q. And the original records show that the State expended that amount?

A. Yes, sir.

Q. Is that true as to all the items in this account on pages four and five of your report? I ask this in order to save time.

A. It is, to the best of my knowledge.

By the Special Master:

Q. In what respect do those items differ from the report made by Mr. Potter?

A. I have not made a minute examination, Mr. Littlefield.

Mr. Anderson: He has not classified them in exactly the same way.

The Witness: To get the exact difference in each item.

The Special Master: Then you would have to make a very careful analysis to get at the differences in details?

A. Yes, sir.

The Special Master: You need not bother to do it now, that is, as far as I am concerned. I did not know but you had it right at hand.

A. I think the items on pages four and five are the same in this and in his.

Mr. Carlisle: As to amounts? 414

A. As to amounts.

The Special Master: You mean the subject matter and the amounts expended?

A. Yes, sir.

Mr. Anderson: Yes, sir; we have Mr. Potter's statement here, and they agree as to that.

By Mr. Anderson:

Q. On page 6 you have a statement of the expenditures upon turnpikes and State roads lying partly in Virginia and partly in West Virginia. The first is the Berkeley and Hampshire Road, upon which, according to your statement, the total expenditure by the Commonwealth was $16,572, of which you ascertained that $13,655.33 was expended in West Virginia, or 82.4 per cent of the total expenditure. How did you ascertain those figures? These are what we may call now interstate roads.

The Special Master: That is identical with the item in Mr. Potter's report.

Mr. Harrison: That is right, sir. There is no difference there.

A. With respect to the road to which you refer, the Berkeley and Hampshire, I secured the 82.4 per cent chargeable to West Virginia, as follows. By the Act of March 1, 1851, page 103, the road is shown to run from Martinsburg in Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County to some point on the Northwestern Turnipke at or near French's Tavern. The Board of Public Works printed report, Volume 17, part 2, page 289, 415 stated the length of that road to be 45½ miles. The Board of Public Works printed report for 1858, at page 23, states that all of it has been finished. By scaling the maps, the length of this road in Virginia is found to be eight miles, and the length in West Virginia 35 and one-half miles. In Crozet's report of 1848—

Mr. Anderson: Crozet was the State Engineer.

A. The distance from Martinsburg to Bloomery Gap is stated to be 29 and one quarter miles. Bloomery Gap is taken to be one and a quarter miles west of Frederick and Hampshire line. By figuring the percentages from those calculations, I arrived at 82.4 per cent total distance in West Virginia. Therefore, 82.4 per cent of the total expenditures was charged to West Virginia.

Q. Does your report contain memoranda showing how you arrived at that result?

A. The report does.

Q. The report itself?

A. Yes, in this instance. In some instances, of course, it does not.

Mr. Spooner: Does that differ from Mr. Potter's statement?

Mr. Anderson: No, sir.

The Special Master: Do you care, gentlemen, to go over these items where there is no discrepancy?

Mr. Anderson: No, sir.

The Special Master: Unless some question is raised about 416
them on the other side?

Mr. Anderson: No, sir; I do not.

The Special Master: Unless there is some question made about these items, where he agrees with Mr. Potter, there is no occasion to spend time on them.

By Mr. Anderson:

Q. Did you ascertain the facts as stated on this page 6 as to these expenditures, aggregating $829,072.09, upon turnpikes and state roads lying partly in Virginia and partly in West Virginia, from the original records and reports of the Commonwealth to which you have referred?

A. Yes, sir.

Q. And maps?

A. Yes, sir.

Q. Now as to bridge companies—bridge companies solely in West Virginia. You find the total expense bill was $81,412.50 upon those bridges, and they are enumerated and described on page 7 of your report?

A. Yes, sir.

Q. Are the facts and figures stated in that account ascertained by you in the same way as you mentioned with respect to turnpikes and roads?

A. Yes, sir.

Q. Now, expenditures upon navigation companies—Coal River Navigation Company, Guyandotte Navigation Company, Monongalia Navigation Company and Tug Fork Navigation Company are found

on the same page, page 7, and the aggregate, according to that account, is $216,020. Were those expenditures traced and ascertained by you and determined in the same way as the 417
others?

A. Yes, sir.

Mr. Spooner: General, do they differ from Mr. Potter's?

Mr. Anderson: No, sir; they agree exactly.

By Mr. Anderson:

Q. Then you have a statement of money expended directly from the State Treasury on turnpikes and State roads lying wholly in West Virginia between those periods, amounting to $77,586.13.

The Special Master: The copy I have here shows $77,886.13.

The Witness: I think, General Anderson, the copy you have is not one of the revised copies.

Mr. Anderson: It is not. This is one of the first copies furnished.

The Witness: I think that was a copy which was made from one of the originals and not corrected. I have the corrected sheets here, however. You can follow them.

Mr. Anderson: My copy, which was a revised copy, I gave to his Honor.

Mr. Spooner: Have you another copy which you can spare?

The Witness: I have not, Mr. Spooner. I only had three revised copies.

The Special Master: Is there any discrepancy between that list and Mr. Potter's figures, Mr. Anderson?

Mr. Anderson: No, sir.

By Mr. Anderson:

Q. Then the next account, on page 9, is with reference to turnpikes and State roads lying partly in Virginia and partly 418
in West Virginia. What figures have you for that, Mr. Lightfoot?

A. Exclusive of the Kanawha Turnpike road and extension of same, and the Kanawha River and Board, the total is $6,080.50.

Q. Lying partly in Virginia and partly in West Virginia?

A. Expended directly from the State treasury.

Q. Including that, how much is it?

A. Including the Kanawha Turnpike road and extension of same, and the Kanawha River and Board—they are not shown as added there.

The Special Master: The addition would be $424,612.00, as I have it here. Is that right?

A. That is right.

The Special Master: Is there any discrepancy in those items, Mr. Harrison?

Mr. Harrison: There is a slight discrepancy.

The Special Master: In what item?

Mr. Harrison: In the Skidmore Fork item.

The Special Master: How much?

Mr. Harrison: Mr. Potter gives his opinion there as 50 per cent., and Mr. Lightfoot at 58 per cent. There is a difference of $80.

The Special Master: Upon which do you rely?

By Mr. Anderson:

Q. How did you get yours, Mr. Lightfoot? You find 58 per cent. and Mr. Potter 50 per cent. of the road is in West Virginia.

The Special Master: Which computation do you rest upon? 419

Mr. Harrison: We rest upon Mr. Potter's.

The Special Master: Then you do not need to spend any time in going into this detail.

By Mr. Anderson:

Q. On page 10 you have a statement of the expenditures by the Commonwealth of Virginia in West Virginia on railroads, and the first item embraces the Winchester & Potomac, 62.5 per cent. in West Virginia, $168,750. How did you get at that, Mr. Lightfoot?

A. Let me find the reference to that, Major.

The Special Master: Is there any discrepancy in that item?

Mr. Harrison: No, sir.

Mr. McClintic: It is a wonderful coincidence, your Honor, that both of them get at the same percentage on both of those things.

The Special Master: I suppose it is assumed they have proceeded upon an accurate hypothesis, and therefore they must come out together. Is there any discrepancy in any of the items on page 10, Mr. Anderson?

Mr. Anderson: There is, in the Covington & Ohio.

The Special Master.: There is no discrepancy between the items with relation to the two railroads?

Mr. Anderson: There is not as to the Winchester and Potomac. The measurement is just the same.

By Mr. Anderson: 420

Q. Now, you find there were $1,1[illegible]4.49 expended by Virginia in the Covington & Ohio Rail[illegible]

The Special Master: That is [illegible] way I have it here. I have it $1,187,140.09.

A. The correction in that [illegible]ould show what Mr. Littlefield has.

Mr. Anderson: Wh[illegible]mount?

A. $1,187,149.09 to be accurate.

The Special Master: Does that agree with Mr. Potter?

Mr. Harrison: No, sir; there is a difference.

The Special Master: Larger or smaller?

Mr. Harrison: Mr. Potter's is smaller.

The Special Master: Upon which do you rely?

Mr. Harrison: Mr. Potter's. There is $25,000 difference.

The Special Master: Then you need not spend any time on this item, need you?

Mr. Harrison: No, sir.

The Witness: I would like to state that the difference comes in because Mr. Potter has worked his out upon a scientific theory of accounting. I was not able to follow the—

Mr. Carlisle: How did you know?

A. I was associated with Mr. Potter for seven and a half months. We consulted over this matter very largely. I assisted him to a large extent, and he assisted me to a larger. Consequently what Mr. Potter has there I am very familiar with, and what I have Mr. Potter is very familiar with. As I wanted to make an independent investigation and could not follow Mr. Potter's theoretical working out of accounts, I had to take my own practical ideas, and I consequently lost $25,000 by it. It is worth that much to get an accountant. 421

By the Special Master:

Q. In other words, Mr. Potter's figures are the figures of an expert and yours are the figures of a lawyer?

A. That is correct, sir.

Q. And they rely on the figures of the experts?

A. Yes, sir.

The Special Master: That disposes of that item, then, so far as this branch of examination goes. Of course I do not mean to shut you off, Mr. Anderson, on any of these except I want to get the issues, and make it as short as we can.

Mr. Anderson: Yes, sir.

By Mr. Anderson:

Q. The miscellaneous expenditures, I believe, agree. I wish to direct your attention to the amount expended by Virginia in banks in West Virginia, $500,000.

The Special Master: What page do you find that on?

Mr. Anderson: That is on page 10.

Q. How do you get at that, Mr. Lightfoot? Some question has been raised about that.

By the Special Master:

Q. Does that differ from Mr. Potter's statement?

A. There is a difference there; yes, sir.

Q. What is it; how much? 422

A. I think there is a difference of $50,000.

Q. Is yours larger or smaller?

A. Mine is larger, if I recollect correctly.

The Special Master: On which computation do you rely, on that item?

Mr. Harrison: Upon Mr. Potter's figures. He is the expert.

Mr. McClintic: They are both the same, $500,000.

The Witness: I thought Mr. Potter's was different. I did not remember.

The Special Master: Mr. Potter gets the same result in another way.

Mr. Harrison: Substantially; that is it.

By Mr. Anderson:

Q. How did you get at the figures you have, $500,000? I have not been able to compare it, and I do not remember what Mr. Potter has.

A. I made up that statement from an examination, first of the documents of the House of Delegates, 1839-40, document 52, on banks situated in West Virginia. The statement there shows $450,000, held as follows: Northwestern Bank, in the name of the Commonwealth, $400,000; in the name of the Literary Fund, $50,000. In addition to the above, the Auditor's statement for the year ending September 30, 1861, Documents 61-2, document 7, page 12, shows 1,000 shares in the name of the Literary Fund in the bank of Fairmont, $50,000; making a total of $500,000. The expenditure of that $400,000 is shown in detail in the ledger in the auditor's office marked "1856-61," at page 55. The figures there shown make 423 up the $400,000. The item of $50,000, mentioned second, is shown in the documents 1861-2, document 7, page 17. The third item, in the same document, 7, page 12.

Q. Those items make the $500,000?

A. Yes, sir.

Q. And that agrees with Mr. Potter?

A. Yes, sir.

Q. I have not found Mr. Potter's estimate. Now, the amount expended on account of the Harper's Ferry raid, as it is called?

A. There is a slight difference there, I think.

The Special Master: He is a little more than $2,000 less than Mr. Potter.

Mr. Harrison: About $2,000 less.

The Special Master: Which do you rely upon?

Mr. Harrison: We rely upon Mr. Potter:

The Special Master: Is it a fact that wherever discrepancies occur between the reports of Mr. Potter and Mr. Lightfoot, the plaintiff relies upon Mr. Potter?

Mr. Anderson: Yes; we rely upon Mr. Potter.

The Special Master: Then what occasion have you for taking the time with Mr. Lightfoot, under the circumstances, unless he is possessed of some information as to the original sources that is not possessed by Mr. Potter?

Mr. Harrison: It shows the result of an independent investigation, and we are introducing it for the purpose of corroborating the statements filed by Mr. Potter.

The Special Master: If they do not happen to agree, they 424
do not corroborate.

Mr. Harrison: As far as they do not agree, they do not corroborate; but so far as they do agree, and so far as the report shows the sources from which the information was derived, they are corroborative.

The Special Master: Very well.

By Mr. Anderson:

Q. Do you remember what you excluded that Mr. Potter included in his statement of the Harper's Ferry expenses?

A. I couldn't say, from memory, where we differed as to items.

The Special Master: That, of course, would be disclosed by a comparison, but there is no occasion to take up time for that if I may rely upon Mr. Potter's report as the authentic report. That is, I will not have any occasion to examine it for that purpose.

By Mr. Anderson:

Q. You make the total expenditures in West Virginia, Mr. Lightfoot, as shown by the last two pages of your report, $5,770,677.48.

The Special Master: That is on page 10?

A. No, sir; page 11, the summarized report. They show the same figures, however. Page 11 is merely a summary of the foregoing.

The Special Master: Yes; I have it.

By Mr. Anderson:

Q. The items aggregating that amount were determined by you in the same manner in which you have taken the details as to a
number of items about which you have testified? 425

A. Yes, sir.

Q. And it is supported by the record and accounts in the public offices of the Commonwealth?

A. They were.

Mr. Anderson: We now offer that report.

The Special Master: Do you wish this all to go in, Mr. Anderson?

Mr. Anderson: Yes, sir; we want the statement to go in.

The Special Master: Just what you have called attention to in the examination?

Mr. Anderson: No, sir; the whole of it.

The Special Master: On page 12 there is a statement of the variance between these figures and those by J. M. Bennett in the report of the Virginia Debt Commission to Governor Jacob, August 9, 1871. Do we have any occasion for that?

Mr. Conrad: It is very important. Then it was the Auditor of Virginia who made the reports on which we rely. He afterwards returned to his home in West Virginia, at the close of the war, and was employed there to make a report by the Governor of West Virginia.

The Special Master: Well, this will become material, I suppose, so far as it tends to show what the actual conditions were; but the mere fact that a discrepancy existed between one accountant and another, of itself, standing alone, would not be very illuminating.

Mr. Conrad: The curious result was disclosed that the re- 426
port made by him under the auspices of West Virginia differed materially and essentially from the report made by him five years before, as Auditor of Virginia.

The Special Master: This has some tendency to affect the integrity or reliability of his reports.

Mr. Carlisle: Yes, both as an officer of old Virginia and as auditor of West Virginia.

Mr. Conrad: He was not the auditor of West Virginia.

Mr. Carlisle: He had been the auditor of Virginia.

Mr. Conrad: He had been the auditor of Virginia, but he never was the auditor of West Virginia.

Mr. Carlisle: Do you think the report in West Virginia was not correct?

Mr. Conrad: I know it was not correct.

Mr. Carlisle: Then what makes you think that the report by the same man in old Virginia was correct?

Mr. Anderson: It was just a compilation of figures.

The Special Master: That will come later.

Mr. Conrad: I will answer that later, or try to do it.

The Special Master: Then, as I understand, you offer the whole of this, Mr. Anderson?

Mr. Anderson: Yes, sir.

The Special Master: What shall we mark this? It relates to all of the various subjects, does it not?

Mr. Anderson: No, sir; it only relates to Article C-2.

The Special Master: Then it will be marked "Plaintiff's Exhibit C-2."

(The paper referred to is filed herewith, marked "Plaintiff's Exhibit C-2.") 427

Cross Examination.

By Mr. Carlisle:

Q. I understand you to say you are not an expert accountant, Mr. Lightfoot?

A. You are correct, sir.

Q. But an attorney at law.

A. Yes, sir.

Q. You were employed as an attorney in the case, were you?

A. No, sir.

Q. You were employed as an ottorney in the case, were you?

A. I was not employed as an attorney in the case.

Q. In what capacity were you employed?

A. I was employed in the broadest capacity that could be devised. It was to do anything which might assist the accountants in this matter, either in a legal way or in the matter of accounting, so far as my abilities went.

Q. In a subordinate capacity?

A. Yes, sir.

Q. Well, as a subordinate, did you make, as you said a while ago, an independent examination of these things?

A. That is correct, sir.

Q. Not subject to the supervision or control in any way of Mr. Potter?

A. Not at all, sir.

Q. Did you consult with him from time to time while you were making the account? 428

A. Very frequently.

Q. What was the character of those consultations? What were they about, in a general way?

A. Let me illustrate. We will take the Covington & Ohio Railroad. When the accountants came to making up their report on the Covington & Ohio Railroad, we found that it involved largely a history of events and of the work of the Board of Public works—not of the Board of Public Works, but of the Commissioners who built that railroad. That tooks us through a large number of volumes of the report of the Board of Public Works and of the documents of the House of Delegates. We had to find the scheme under which the engineers built that road. We had to find the history of the various proposed routes, and the authority for the one which they

finally adopted, and the cost of surveys on various routes, the division which the engineers made between Covington and the western end of the road, so as to divide the expenditures properly between Virginia and West Virginia. The conferences with Mr. Potter on that subject were of great assistance to me, and I do not hesitate to say the conferences with me were of great assistance to Mr. Potter. That is merely an illustration of the way we worked together.

Q. That is one instance?

A. Yes, sir.

Q. I asked you for your general course while you were there acting as a subordinate to Mr. Potter, as I understood you to say you were.

A. Yes, sir. 429

Q. Did you not co-operate with Mr. Potter all the way through this investigation?

A. All the way through; yes, sir.

Q. So that it was not, as you said, an independent investigation on your part?

A. It was independent in this sense, that the report which I have here I made up from notes which I myself took during the work with Mr. Potter.

Q. I understand that. Then you submitted them to Mr. Potter, did you not?

A. No, sir.

Q. You did not?

A. I did not.

Q. When you came to revise them, where did you get your information for your revision?

A. I got my information from the same sources.

Q. Did you go back to the original sources again?

A. Absolutely; yes, sir.

Q. Sources that were original with you?

A. Yes, sir.

Q. Did Mr. Potter ever have that report?

A. Yes, sir; he made a copy of it.

Q. Did he have it before he made his report?

A. As to that I can't state positively. I think he did.

Q. Then, as I understand you, there are some differences between the amounts found by you and the amounts found by Mr. Potter? 430

A. In some instances; yes, sir.

Q. A few instances? About how many?

A. Probably not over three or four.

Q. Then, as I understand you, an independent investigation made by a gentleman who is not an expert accountant at all, of all these

numerous accounts, agrees, except in three or four instances, with the investigation made by an expert accountant?

A. That is correct, as to the expenditures within the counties comprising the State of West Virginia. You understand, Senator, this report does not go beyond that item.

Q. Then if Mr. Potter is an expert accountant, you are one also, are you not?

A. If I am as close to Mr. Potter's results as this, I think I might say I am.

Q. You are almost as good an expert accountant as he is?

A. I should think so.

Q. Mr. Lightfoot, did you consult Mr. Potter at any time during this investigation as to what should and what should not be included in his accounts?

A. In his accounts?

Q. Yes.

A. I think I had better answer that question generally by saying that possibly there is no question which arose in connection with these accounts in toto that was not discussed between Mr. Potter and myself.

Q. If, for instance, Mr. Potter had charged certain items 431
under the head of ordinary expenses, if he had to charge certain others as moneys expended in West Virginia, then he had to credit West Virginia with certain moneys which had been paid into the public treasury by the counties now composing that State. Did you advise Mr. Potter as to what he should include in any one of these accounts, and what he should exclude from any one of these accounts, as a lawyer, as an attorney? You were there in that capacity as I understand you?

A. No, sir; I was not there in the capacity of an attorney to advise Mr. Potter.

Q. Well, you were not an accountant, you say?

A. No, sir.

Q. In what capacity were you acting?

A. I was there in the capacity of a subordinate, to assist in any way I might.

Q. A subordinate accountant, or a subordinate—

A. If you will pardon me, let me be understood.

Q. I do not want to confuse you. I want to get the facts. That is all.

A. It is a fact that I want clearly stated. I would not like my position to be misunderstood. It was clearly understood, when I was assigned to this work, that while my legal opinion might be valuable, it was not to be final. In fact, it was not to be taken in

important matters at all, without reference to a regularly employed counsel.

Q. I did not ask you whether your opinion was final or not. 432
I simply asked you if you did or did not consult with him and advise him?

A. As I have stated, I undoubtedly did, and I gave my opinion in numerous instances.

Q. Did he follow your opinion?

A. That I couldn't tell you.

Q. You can look at his account and see. Does your account differ from his as to the classification of any of those matters about which you gave him advice?

A. I would not attempt to answer, it covers such a multitude of detail.

Q. You consulted him a great many times, did you not?

A. Numerous times. In fact, we were working together. He would sit at this end of this desk, and I would sit at the other end, frequently.

Q. There are only three or four differences, as you have already stated, between your account and the account of the expert?

A. I think that is all, sir.

Q. Are they on figures or on classification of the accounts?

A. As to the main differences—well, what do you mean by classification?

Q. I mean whether a particular item should be charged as an ordinary expense or should be charged as a direct payment to West Virginia, or should be credited to West Virginia as a payment by her counties into the public treasury. You know the division of each county, under the decree of the Court.

A. Yes. The discrepancy of the Covington & Ohio Rail- 433
road—

Q. I am not asking for any particular thing.

A. I can best illustrate it in that way.

Mr. McClintic: We do not want an illustration. We want facts.

By Mr. Carlisle:

Q. Well, go on.

A. The discrepancy in the case of the Covington & Ohio Railroad, which, according to my memory, covers about $25,000 loss in the difference between Mr. Potter's method of dividing the administrative expenses and my method of dividing the same, is one instance. There is a discrepancy in the Northwestern turnpike accounts, which, according to the best of my memory, is for the same reason—probably that and the Staunton and Parkersburg.

Q. You see, Mr. Lightfoot, I am not asking you anything on that

subject. I am asking you whether you and Mr. Potter differed at any time with respect to the classification of the accounts; that is, to which account a particular item should go.

Mr. Anderson: About any matter in this account or the other account?

Mr. Carlisle: All the accounts. I want to know in other words, if his account and Mr. Potter's account agree as to the classification of the items, and if so, how that came about?

A. They do. 434

Q. How did that come about? You are not an expert accountant, and he is. How did this agreement between you and him come about?

A. Because, so far as I see, there is only one possible classification—that is, into turnpikes wholly within the State of West Virginia, turnpikes partly—

M. Lightfoot. I am very unfortunate in not being able to make myself understood.

The Special Master: The question simply is, Mr. Lightfoot, inasmuch as you and Mr. Potter did agree on the classification, how does it happen you did agree?

Mr. Harrison: But there is no item in this statement except money spent wholly or partly in West Virginia.

The Special Master: Then it may be one great classification. There are various items.

Mr. Carlisle: There are three different material accounts.

The Special Master: The simple question now is how they came to agree on the classification between themselves. That is the only question asked now.

Mr. Carlisle: That is my question.

By Mr. Carlisle:

Q. There are three accounts there which I have already enumerated, and your report and Mr. Potter's report, if I understand it, agree substantially on the items contained in those classifications. I do not mean as to amounts now. You agree that this item should go into this account, and another one into another account, under the decree of the Court. How did you happen to agree on this classification—not on amounts. I am not talking about 435 amounts at all.

A. I understand you. May I ask you again, Senator, to explain the meaning of classification?

Q. I will state it again. I can state it from the decree.

Q. Would you take my report and illustrate?

A. That is not necessary at all. I don't know what your report is on that subject. The decree directs the Master to ascertain three

things which affect the accounts between these two states. The first is that West Virginia shall be credited with all the money which the counties now composing that state, paid into the Treasury of the State of Virginia during the time this debt was being created?

A. May I interrupt you? My report takes no account whatever of that.

Q. What does your report relate to?

A. Only expenditures within the Commonwealth.

Q. Leave that out, then. There are two other accounts. The decree, then, directs the Master to ascertain and report West Virginia's just proportion of the ordinary expenses for the State of Virginia, which of course requires him to ascertain what the ordinary expenses of Virginia amounted to during that period.

A. May I interrupt there?

Q. Yes.

A. My report takes no account whatsoever of that.

The Special Master: His report, Mr. Carlisle, is only made under paragraph 3, plaintiff's exhibit C, which relates simply to expenditures made by the Commonwealth of Virginia, as I understand it. I may be wrong about this, but as I understand it Mr. 436
Lightfoot's report is confined entirely to that particular item.

Mr. Harrison: Absolutely.

The Special Master: And up to date he has not testified about any other item? The report submitted covers only that particular item, and does not go any further.

Mr. Carlisle: Then on that item, we will confine ourselves to the report. I thought his report covered the whole thing.

The Special Master: I had that impression in the beginning, but I find it is confined to that paragraph.

By Mr. Carlisle:

Q. I understand, then, Mr. Lightfoot, that this report refers to expenditures made by the Commonwealth of Virginia in the territory now constituting the State of West Virginia since any part of the debt was contracted. That is the only one, as I understand now, that you investigated.

A. That is correct.

Q. Does your report agree with Mr. Potter's report under that item of the decree?

A. It does not.

Q. In what respects does it differ?

A. There is a discrepancy probably amounting to nearly
$50,000. 437

Q. I did not ask for dollars and cents. I have expressly excluded that. Do you agree as to the items you have charged

under that against West Virginia? Did you agree upon the subject matters that should go in there?

A. Practically, I think we did. I know of no instance in which we did not.

Q. You consulted about that, did you not?

A. Undoubtedly, yes.

Q. Did or did you not advise him on that subject, as to what he should put in?

A. In specific instances, I have no doubt that I did.

Q. Did he take your advice?

A. I couldn't tell you, Senator.

Q. His report will show you that?

A. I have no doubt he did.

Q. He put them in?

A. I have no doubt of it.

Q. Now, there is an item in there of eight hundred and some odd thousand dollars for school expenditures in the counties of West Virginia, Did you consult with him about that?

A. Yes, sir; as to that item. Let me find that item. It is added in ink at the end of my report.

Q. After you had made your report?

A. After I had made my report. It is to indicate, and is a fact, that as to that item, I made no personal investigation. I took Mr. Potter's figure entirely, in order to complete the nature of my report.

Q. So you had no consultation about that item, you mean to say, before Mr. Potter included it in his report? 438

A. Before what date?

Q. Before he included it in his report. You took that item from Mr. Potter's figures?

A. Entirely so; yes, sir.

Q. Previous to the time when you took it from his figures, you had no consultation about it, as I understand it?

A. Yes; we had. We had worked together on compiling those figures of his report. I had not included it in mine. I had no notes on the subject.

Q. I misunderstood you. I thought you said you did not investigate that subject at all.

A. Not for the purpose of my report. I made no notes for my own purposes on that item.

Q. Do you know why you had not included that in your report, when you took up the specification of the decree, to ascertain what money had been expended by the State of Virginia in the counties composing the State of West Virginia?

A. Yes, sir; I can explain that, I think. The original idea of this report was to furnish to the attorney general or the counsel

some idea as to the expenditures for the physical internal improvements. It was intended primarily to cover the turnpike companies, the bridge and navigation companies and the railroads.

Q. That is what is covered by the decree.

A. I was not instructed to do that by the attorney general, but I got it up on my own idea, and later when the report was completed and handed in, I found that Mr. Potter had in- 439
cluded the school commissions in his report.

Q. You put it on the bottom of yours?

A. I put it on the bottom of mine, to make a full figure.

Q. Mr. Lightfoot, in apportioning the amounts which were expended on turnpikes, roads, bridges and navigation companies, which you had to do, you say, by ascertaining the percentage of the work in the one State or in the other?

A. Yes, sir.

Q. Did you and Mr. Potter collaborate on that together?

A. A great deal; yes, sir.

Q. Who made the measurements on the maps?

A. Why, we both made them.

Q. Did Mr. Potter or any one of his assistants go over all those measurements, so far as you know?

A. So far as I know, Mr. Potter or one of his assistants personally went over all of them.

Q. Did Mr. Potter or any of his assistants, so far as you know, go through the books to see whether your amounts were right or not?

A. No, sir; they did not check my amounts. They checked their own.

Q. So that the amounts which are reported there by Mr. Potter are the amounts found by you?

A. Undoubtedly.

Q. Not by him?

A. No, sir.

Q. Not by any of his assistants? 440

A. That is correct sir.

Q. Do they disagree from Mr. Potter's in any way?

A. They do not, except in the one or two instances mentioned.

Q. Do you know how that disagreement came about?

A. May I state that now?

Q. Yes, sir.

A. Referring back to this Covington & Ohio matter—

The Special Master. You do not need to go over that again, Mr. Carlisle:

The Witness: Then I can't explain how it came about

The Special Master: You need not explain that one instance again, because you have already explained it twice. If there are

any other instances, you may explain them. You do not care to have him go over that again, Mr. Carlisle?

Mr. Carlisle: Oh, no, sir.

The witness: I understood you to ask me the question, and it would require repetition.

By Mr. Carlisle:

Q. What other instance have you beside the Covington & Ohio?

A. The Staunton and Parkersburg and the Northwestern Turnpike are the only two I recall right now.

Q. How did that disagreement come about?

A. From the different methods we used in getting at it.

Q. In getting at the amount? 441

A. Yes, sir.

Q. I understood you just now to say that neither Mr. Potter nor his assistants investigated the amounts at all; that they took your figures on the amounts?

The Special Master: You did not get the whole of his answer, Mr. Carlisle; I noticed particularly in answer to that question that he said they did not examine as to his items, but did examine as to their own.

Mr. Carlisle: That is one of your items?

A. Let me make that answer a little more clear. I said that neither Mr. Potter or his assistants checked my amounts in order to ascertain if they were correct. They themselves made up independently their amounts and checked those.

Mr. Carlisle: I misunderstood you entirely?

A. Yes, sir.

The Special Master: I thought you did. That is substantially what he said before.

Mr. Carlisle: My question to the witness was whether they had investigated the amounts, and he said no, as I understood him.

A. We compared them, of course, to see if we had arrived at the same conclusions.

By Mr. Carlisle:

Q. Yes; I understand that. Now, you were asked about this celebrated John Brown raid. Did you investigate that account?

A. Yes, sir.

Q. How did you come to investigate that account, when 442
you say you started in to ascertain only the amounts expended for improvements in West Virginia? Did you think that was an improvement?

A. I investigated that at the special request of the attorney general.

Q. That was beyond the scope of your investigation, as I under-

stood it, at the start? That was beyond the scope of your report?

A. No, sir. It was beyond the scope of my report as I had personally intended to make one.

Q. If you started out as you said a while ago to investigate the accounts of money expended in West Virginia for internal improvements, et cetera, would not the John Brown raid expenditure be outside the scope of that investigation?

A. As to internal improvements?

Q. Yes, sir.

A. It would be outside of the scope of my report. Physical improvements, was the idea of my report.

Q. Why did you suppose that was an expenditure to be charged to the counties composing the State of West Virginia?

A. Because so far as—

Q. As a lawyer, now, why did you suppose that expenditure was an expenditure chargeable alone to the counties composing the State of West Virginia?

A. So far as my judgment went in the items included they were expenditures within the counties of West Virginia.

Q. I suppose you included the idea that they were expended 443
for the benefit of the counties of West Virginia?

A. You suppose I included that idea?

Mr. Anderson: The decree does not take account of beneficial expenditures in West Virginia.

Mr. Carlisle: Money expended for the benefit of West Virginia exclusively.

Mr. Conrad: Not at all.

Mr. Carlisle: We differ about that. A great deal of money was expended in West Virginia during this period for various purposes, but it was for the common benefit.

Mr. Conrad: I think the tunnel through the Blue Ridge Mountains, which is entirely in the State of Virginia, was as much for the benefit of the counties of West Virginia as of Virginia.

Mr. Spooner: You do not see any connection between that and the John Brown raid, do you?

Mr. Conrad: The parallel, Senator, is that the body politic is like the human being. The food put in the mouth goes for the nutrition of the whole body, and not for the mouth alone.

Mr. Carlisle: Suppose the body politic had three heads, the restored government, the government at Richmond and the West Virginia government.

The Special Master: That is a sort of an aggravated Siamese twins illustration. You may proceed with the examination.

Mr. Carlisle: I want to see what the account is for, what 444
the items of the expenditure were made for.

Mr. Harrison: Which account?

Mr. Carlisle: I want to see whether it includes anything for the trial of John Brown, the sheriff's fees for hanging, or whatever was in there.

A. My notes, so far as this report has it on that subject is:

"The above is obtained from the reports of the Auditing Board of March 15, 1860, and January 1, 1861, as published in Senate Documents 1859-60, document 62 and Senate Documents extra session 1861, document 2."

By Mr. Carlisle:

Q. Do they give the items?

A. They give all the items.

Q. You haven't them?

A. I haven't them here; no sir. I picked out such items as I thought in my own judgment were proper.

Q. That is what I want to get at. Will you state to the Master what character of items you included?

A. I find a further note:

"The basis of charges to West Virginia are for expenditures at Harper's Ferry and Charlestown, but expenditures for arms, ordinance, blankets, overcoats, and transportation are not included in the above."

Q. The trial of John Brown, though, and the expense of it, are included there?

A. No; I am very sure the trial was not included in the report.

Q. You spoke of Harper's Ferry and Charlestown. That is where he was tried and executed. What expenses at 445
Charlestown are included?

A. I can't tell you without having that report here. There are in that report the data and vouchers for everything that they paid.

Q. Could you get those details some time to-day?

Mr. Conrad: We can get them in fifteen minutes. They are in Senate Documents 1859-60.

A. It is very possible I have them here in my notes.

Mr. Carlisle: I do not care so much about the details, because the whole trial, as a matter of history, is in the record.

The Special Master: He thinks he has the details here.

Mr. Carlisle: What was it at Charlestown?

Mr. Anderson: The charge was for the support of 1,500 troops for a month or two. I don't remember the time.

Mr. Carlisle: At Charlestown?

Mr. Anderson: Chiefly at Charlestown. The money was expended in West Virginia.

The Special Master: Do you find the items, Mr. Lightfoot?

A. No, sir; I do not find them.

Mr. Carlisle: I am through with the witness.

Mr. McClintic: I would like to ask one or two questions on the road matter.

By Mr. McClintic:

Q. You charge the Back Creek Valley road, and Mr. Potter does not charge it. Which is correct in that instance?

A. If you expect me to answer that question, I will say 446
I am.

Q. Where is the Back Creek Valley Road; in West Virginia?

A. Just a moment, sir. I will give you some information on that.

The Special Master: On what page do you find that?

Mr. McClintic: It is on page 6.

Mr. Conrad: It is partly in Hampshire and Frederick counties, but the bulk of it is in Hampshire county.

A. With reference to the Back Creek Valley road, I find this note:

"Virginia 58 per cent, $661.20; West Virginia, 42 per cent, $478.80; total expenditures, $1,140.00. Act of March 8th, 1856, page 134. Road to run from the Northwest Turnpike near Lockhart's Tavern, in Frederick county, up Back Creek Valley to Capon Springs in Hampshire County. See Act of March 29, 1860, page 302, for States subscription. The 'nine section' map shows this road beginning about ½ mile west of Lockhart's Gap and running to Capon Springs. By scaling that I find the total distance to be 16¾ miles; in Frederick county, 9¾ miles; in Hardy county, 7 miles."

By Mr. McClintic:

Q. Is that Hardy or Hampshire?

A. It should be Hampshire. That is evidently a mistake.

Q. You charge there the Abbs Valley and Tug road wholly in West Virginia, on page 4. Do you know Abbs is in Tazewell County, Virginia? 447

A. Yes, Abbs Valley is in Tazewell County.

Q. Where they had the celebrated Indian massacre and various and sundry other historical episodes?

A. I don't personally recollect it, but I have no doubt that is true.

Q. Do you say that is all in West Virginia or partly in West Virginia, that Abbs Valley and Tug road?

A. I have it wholly in West Virginia.

Q. Is that your best judgment?

A. That is my best judgment.

Q. On page 8 you have the Allegheny mountain turnpike wholly in West Virginia. What have you in relation to that?

A. What is your next one, sir?

Q. The Allegheny mountain turnpike?

A. As to the Abbs Valley, I have no notes here which would assist. I have references. I think as to the Allegheny Mountain turnpike I have a specific note, however. (After examination.) No; I have no specific note here as to that. I have only the references.

Q. As a matter of fact, do you not remember that the Acts calls for Pendleton and Pocahontas Counties?

A. I can't say that I recall the Act.

Q. And look further for it when you look for it, and see if that part of Pendleton County was not afterwards made into Highland County?

A. That may probably be true, sir.

Q. Those are the facts in the case. 448

Mr. Anderson: What was the date of it?

Mr. McClintic: I do not recall the date.

A. My report will show the date of the expenditure, not of the Act. Mr. Taylor's report would show the date of the Act.

By Mr. McClintic:

Q. You have the Louisa Fork of Sandy River road?

A. Yes, sir.

Q. Where is that?

A. What page are you referring to now?

The Special Master: It is page 8, $1,000.

A. I have no note on the location of that road. I have only references to the expenditures, but those references are doubtless the ones from which I obtained this information. I will refer back to it.

Mr. McClintic: That is all.

The Special Master: Have you anything to ask on re-direct?

Mr. Conrad: There is just one question I want to ask, referring to Mr. Carlisle's examination.

Re-Direct Examination.

By Mr. Conrad:

Q. You refer to your report there as an independent inquiry of your own. I would ask you if there is any fact or figure stated in your report which was acquired by you by adoption from Mr. Potter or from any other source, or whether you derived it from original investigation of your own?

A. I derived it from original investigation of my own, with the single exception of this payment for schools in West Virginia, which I have already stated. 449

Q. Yes. Having derived all the facts and figures by original investigation of your own, I would ask whether your application of those facts and figures in any respect was derived by you from Mr. Potter's scheme, or whether it was an original device of your own.

A. So far as I have any recollection at all, it is entirely an original device of my own.

The Special Master: That is, you acted on your own initiative?

A. Yes, sir; entirely so.

By Mr. Conrad:

Q. You adopted nothing in either the ascertainment of facts and figures of the application of them. Is that your answer?

A. Yes, sir.

[*Vol. 5. May 6, 1909. Direct Examination of T. B. Dixey.*]

Mr. McClintic: I will now present exhibit marked Defendant's Exhibit C-1. If the Court pleases, in Defendant's Exhibit C-1, we do not wish to present it in the exact form in which it 513
is here. I desire to make some changes in it and have the stenographer take the changes down.

On page 2, item for Brandonville, Kingwood & Evansville Road, $10,595.73; the item for the Clarksburg and Buchanan Road, $19,259.36; and the item for the Kingwood and West Union Turnpike company, $18,140.61, we desire to eliminate from 514
this report. With the permission of the other side, I will state the reasons.

Those three roads or turnpike companies were incorporated under the laws of Virginia, and after they had been incorporated and virtually built by these stock companies, the State appropriated those three sums, which I believe are correct in amount, for certain work, I believe, for macadamizing those three roads, which I believe, belonged to these private corporations; and we wish to reserve the question for argument as to whether there is any liability on us for those items.

Mr. Harrison: What do you mean by saying the State appropriated those three sums, and what do you refer to as the evidence of that appropriation?

Mr. McClintic: The evidence appears from the acts which appropriated that amount of money, which was expended on the roads belonging to a private company in the State of Virginia, as in the nature of a gift to those three companies. I do not think there is any doubt about the facts. It is a question of argument.

The Special Master: The only question is whether under the law

and the decree it is an item to be properly taken into consideration in this connection.

Mr. McClintic: Yes; that is right.

Again on page 4, of that exhibit, there is charged to the Trans-Allegheny Lunatic Asylum at Weston, $125,000. We desire to ask that that be changed from $125,000 to $98,000 on the exhibit, and later, perhaps, to show by evidence that while that sum of money, $125,000, was drawn from the Treasury of the State of Virginia prior to the 1st day of January, 1861, that $27,000 of 515
that sum was in the hands of the Treasurer of the Board of Directors of the Trans-Allegheny Lunatic Asylum, and had been expended; but was still the property of the State of Virginia; and in the summer of 1861 the restored government, which, as we claim, for all necessary purposes was the State of Virginia, took that money from the hands of the treasurer and used it for its own purposes, and the same was not expended on the building for which it was originally appropriated by Virginia. In other words, $98,000 instead of $125,000 was spent.

Mr. Anderson: It was expended in West Virginia, but it was expended in a different way.

Mr. McClintic: Yes; it was spent to have that ordinance passed and for other necessary things that were needed at that time.

With those changes, we desire to offer this exhibit Defendant's Exhibit C-1 in evidence.

(The exhibit was marked accordingly.)

Mr. McClintic: Please state if you made this exhibit?

The Witness: I prepared and made this exhibit.

The Special Master: Can you state in this connection the acts of the legislature upon which you rely in connection with the three things you have struck out, so that it will be in the record in that connection.

Mr. McClintic: With the kind permission of the other side, I will use the index of the other side and find out for your Honor in a moment.

Mr. McClintic: The Clarksburg and Buchanan Road—

Mr. Harrison: What page have you? 516

Mr. McClintic: I am on page 6 of Taylor's report. The Clarksburg and Buckhannon Road was incorporated March 9, 1848, Acts, page 219. In 1853, Acts of 1853, page 70, the moneys expended on the road were appropriated, or the Board of Public Works was authorized to borrow and spend that sum.

The Kingwood & West Union Turnpike Company was incorporates in 1848, Acts, page 216, and this other expenditure was authorized in 1853, Acts, page 11. I do not find in this exhibit the

Brandonville and the other one. It might be under some other name, but I do not see it.

The Special Master: You can supply that later, then?

Mr. McClintic: Yes, I can supply it later.

The Special Master: And when you get it, I will have the stenographer put it in the notes in its place. It will be a great convenience to me in looking this thing over later, to have everything grouped together.

(The information referred to is as follows):

By Mr. McClintic:

Q. State, Mr. Dixey, whether this exhibit includes all the 517
expenditures by direct appropriation made for roads in the West Virginia counties, the counties now forming West Virginia, and if any are omitted, if you know, why were they omitted?

A. It includes all the direct expenditures under appropriations for roads made by the Commonwealth of Virginia in the territory now constituting the State of West Virginia between March 19, 1823, and January 21, 1861.

Q. State about the expenditure on page 2, of the Moorefield & Allegheny Turnpike Company for building the stem to Petersburg. $4,500. Was there any other expenditure by that company, or on that road, either?

A. In addition?

Q. In addition to the sum of $4,500 for the stem up to Petersburg.

A. That is shown as the expense of building the stem to Peterburg.

Q. That was a direct appropriation, was it not?

A. Yes, sir; a direct appropriation.

Q. For a particular purpose.

A For that particular purpose, it is shown.

Q. Was that an incorporated company or a direct appropriation, the Moorefield & Alleghent Company proper?

A. That was a direct appropriation.

Q. I mean the Moorefield & Allegheny Turnpike Company proper. Was that an incorporated company?

A. The Moorefield & Allegheny Turnpike Company was an incorporated company.

Q. Is the value of that included in any exhibit made by you? 518

A. Yes; in under 7.

Q. I will examine you then under 7 in reference to it.

Mr. Harrison: What was the last question that related to 7?

Mr. McClintic: This Moorefield & Alleghent turnpike company. It is an incorporated company, except a certain sum, $4,500, ap-

propriated to build what the State termed a stem to Petersburg; that is, a branch from the main stem.

Mr. Harrison: And he does not show on this schedule the expense of the stem to Petersburg?

Mr. McClintic: He only shows the expense of the stem to Petersburg.

Mr. Harrison: The $4,500.

Mr. McClintic: Yes.

Mr. Harrison: It does not show, then—

Mr. McClintic: It does not show what you might term the main construction of the line?

Mr. Harrison: That is shown somewhere else?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. On page 3 of this exhibit there is shown the Abbs Valley and Tug road.

A. Yes, sir.

Q. State as to what percentage charged to West Virginia 519
what the percentage is on the exhibit you have?

A. As lithographed, it was 9.91. It has been changed on the original here and on the Master's copy, and I think on most of the copies, to 90.10. It was an error in typewriting which was corrected in reading back the proof.

Q. That road has been testified to as being wholly in West Virginia. What did your examination show as to that road?

A. It showed that something over 90 per cent., 90.10 per cent. was in West Virginia; the balance in Virginia.

Q. What county, if you remember? Tazewell County, if you will allow me.

A. I don't remember; no.

Q. As a matter of fact it is Tazewell County.

Mr. Anderson: The ten per cent. is in Tazewell County?

By Mr. McClintic:

Q. The next item following that is the Allegheny Mountain Turnpike. State if you know whether that is in both States or not?

A. 55.55 per cent. in mileage, as we measured it, is in West Virginia.

Q. Do you know the counties that is in?

A. I don't recall them; no, sir.

Q. In the next item, the Berryville and Charlestown Turnpike, for which is charged the sum of $4,221.56 against West Virginia, out of $7,236.97, please explain to the Court the history of that road, if you remember it, as to how that charge came about?

A. That road was originally incorporated and the State 520
subscribed to the stock of it. Later it had to buy in the road for the amount that is charged there, $7,236.97, to protect its interests in the property.

Q. How was it sold, if you know, by any report or exhibit?

A. How do you mean?

Q. I mean who sold the road when the State had to buy it in? Was it a mortgage sale, a deed of trust sale, or what?

A. It was sold under a deed of trust.

Mr. Anderson: Which road is that?

Mr. McClintic: The Berryville and Charlestown.

By Mr. McClintic:

Q. By whom was the deed of trust executed, if you know?

A. I don't remember.

The Special Master: It was sold for that sum?

A. $7,236.97.

Mr. Conrad: What year was that?

A. It was sold in 1858—the purchase was made in 1858.

Mr. Anderson: The State bought it in?

A. Yes; bought it in.

By Mr. McClintic:

Q. On the same page, 3, is the Northwestern Turnpike road, in which the total expenditure was $620,271.38, with which you charge the West Virginia $573,994.39. Please explain to the Master how that account was made up, what books were kept in relation to it, etc.?

A. Well, the account included the items stated in the note on the road. It says: 521

"Includes tolls, &c., expended on the road, amounting to $173,670.39. The charge to Wythe, Virginia, excludes items which the construction books show as expended in the present State of Virginia, and include those which were expended in West Virginia, and a proportion on a mileage basis of items which were not designated in the construction books of the internal improvement fund as directly chargeable to either present State. These latter amounts are divided on the basis of the length of the whole road, 92.94 per cent. in West Virginia, the length of the Eastern Section, 61.05 per cent. in West Virginia, and the charge on 86 miles of the road west of Winchester, 80.03 per cent. being in West Virginia."

And the entire charge to West Virginia of those items on the basis above stated was $573,994.39.

Q. For the purpose of clearness, was credit given to West Virginia anywhere in this account for her proportion of those tolls—not on this exhibit, but on any other exhibit in this account, was credit given to her for her proportion of those tolls?

A. Are these tolls included in the cost?

A. Yes.

Q. I will have to look it up, Mr. McClintic, in the exhibit on which it appears.

By the Special Master:

Q. Your charge to West Virginia is almost $150,000 more than theirs?

A. That is accounted for very largely by these tolls that 522
were included in the road.

Q. Your idea is that they are not included as a credit in your item?

A. They were not included as a credit here. They are a charge here, but I do not want to state the amount of the credit on another schedule when it will be of record and I can state it exactly.

Q. They give the tolls as $162,679.26. Your statement is $173,670.39. Is that intended to be the same item, do you think?

A. We are not able to identify it exactly. There are a number of these accounts that we do not identify exactly.

Q. That is, that you are not quite certain whether when they state the tolls as $162,679.26, they are endeavoring to state the item you give as $173,670.39?

A. Yes. I don't know where the difference is exactly.

Mr. Conrad: Our statements take no account of tolls at all, either way.

The Special Master: Let me make this inquiry right here. Do I understand counsel for West Virginia to concede that this charge of $573,994.39 is correct?

Mr. McClintic: It is correct if the credit which we ask for in another place is correct.

The Special Master: I am asking about this entry here. Is this entry as it stands here correct?

Mr. McClintic: Yes; it is a correct item. 523

The Special Master: The other item will have to stand by itself, as to whether it is allowed or disallowed. So far as this item is concerned, I may take it as a concession on your part that it is correct?

Mr. McClintic: That is what the books show, as being the amount that went into the construction of the road. We took every dollar and every cent that went in. Your Honor will find several of these items are larger than was attempted to be charged by Virginia, because we had to take our own findings in the books.

The Special Master: Of course when I reach a question like that I am quite anxious to know just how counsel feel about it.

Mr. McClintic: We were very sorry to alarm you, but it could not change the facts. That was the position we had to take in that matter.

The Special Master: So far as your contentions are concerned, that would not disturb me any.

Mr. Hogg: There is a corresponding reduction by tolls.

The Special Master: That is another item, but *quoad* this point here, that is conceded to be correct.

By Mr. McClintic:

Q. On page 4, Mr. Dixey, there is a road marked "South Branch of Potomac River to Brock's Gap, in Rockingham County, charging West Virginia with $411.80. State what you know of that division?

A. 29.41 per cent. was charged to West Virginia on a mile- 524
age basis. That is to say, 29.41 per cent. of the road lay in West Virginia.

Q. Did you make a personal examination in that case, or was that information furnished you by your assistants?

A. I didn't scale any of these roads.

Q. Who did scale them?

A. Mr. Clifford E. Scoville, my Chief of Staff.

Q. I wanted to ask you the general question a while ago, and I was interrupted. How were all these percentatges arrived at in reference to this class of roads?

A. By scaling the maps, by actual measurements, and from the engineer's reports.

Q. All the sources of information of that character that you could get?

A. All the sources of information that were available.

Q. The next item is the Staunton and Parkersburg Road. Please explain to the Master the sources of the charges made therein, of $288,807.56.

A. The whole charge of $388,936.97, includes tolls and the interest earned, amounting to $26,272.55 expended on the road; charge to West Virginia excludes items which the construction books of the road and the books of the internal improvement fund designate as chargeable to the present State of Virginia. It includes items which are designated as having been expended in West Virginia, and a proportion on a mileage basis of expenditures not designated 525
as chargeable directly to either present state. Such expenditures are divided on a basis of the total mileage of the eastern division, 40.48 per cent. being in West Virginia, and on the basis of the total length of the road, 73.40 per cent. being in West Virginia; and on the above basis there was charged to West Virginia, $288,807.56.

Q. To go back just a moment, on page 2 of this exhibit I find charge to the road for the Middle-Bourne & Pennsylvania road, $6,252. What total, if any, has the plaintiff filed that road under, if you know?

The Special Master: And on what page of their exhibit is it found?

A. I would have to see the exhibit.

Mr. McClintic: On their exhibit, if I have got the same road—I am not sure that I am correct. I want to see if they meant, on page 16 of Exhibit C-1 for the plaintiff, that that was the same road called Tyler County to Green County State road?

Mr. Harrison: Has he answered your last question? That is to say, what corresponding road our exhibit showed?

Mr. McClintic: That is what I am trying to see, whether he knew it or not.

Mr. Harrison: He has not answered yet.

A. I have no exhibit before me, and I could not identify it in that way. I would not be able to identify it as that road.

Q. You have on page 2 a road called the Morgantown to Beverly road, $12.000. Do you know whether there is any 526
road of that title in plaintiff's Exhibit No. C-1?

A. There is in the plaintiff's exhibit a road, and there seems to be some confusion between that road and what we term the Morgan and Beverly road, right above in our exhibit.

Q. Is there anything that corresponds, either in amount or name, with the one called the Morgantown to Beverly road on their exhibit, if you know?

A. I don't recall now find such a road. I looked for it and could not find it.

By the Special Master:

Q. Did you find the data from which you made this statement in the books of original entry?

A. Yes; the names given here are those of the Acts and are also reported in the books of original entry. Of course *were* their terms were different, we frequently could not identify just what property they were referring to; and that would be true of them in our case.

Q. Did you intend your designations here to be duplicates of the titles of the accounts that you found in the books of original entry?

A. Not always duplicates. We intended them to designate very specifically the road that was referred to.

Q. Why should they not be duplicates of the entries? If the name of the road is entered on the book, why should it not be carried forwards in the account?

A. They are practically so, to all intents and purposes. 527
They are very little changed?

By Mr. McClintic:

Q. Mr. Dixey, if you have the dates when the amounts we ap-

propriated and paid to the Trans-Alleghany Lunatic Asylum at Weston, I wish you would give them.

A. I did not get your question, Mr. McClintic.

Q. I want the dates when the amounts were paid for the Trans-Alleghany Lunatic Asylum at Weston—the month and the year, if you have it.

A. Then we will have to get the original papers.

Q. Is it in these papers here?

A. I haven't it her, Mr. McClintic.

Q. I mean is it in this box here?

A. Yes, sir.

Q. Let your assistant get it for you. Have you found the amount?

A. Yes; the dates of the payments to the Trans-Alleghany Lunatic Asylum were in 1858.

Q. Will you give the month, in the latter case, at least?

A. In 1858, $8,000; in 1859, $17,000; in the fiscal year 1860, $50,000; and in December, 1860, $50,000 more.

Q. That is all I wanted, the last date.

A. Making a total of $125,000.

Q. The last payment was made in December?

A. In December, 1860.

Q. Will you look at plaintiff's Exhibit C-1, Mr. Dixey, I want to ask some questions in relation to it. 528

A. Yes, sir.

Q. I find on page 3, I believe it is, of plaintiff's Exhibit C-1 Winchester and Potomac Railroad, which apparently charges to West Virginia $168,750. Please state to the court what those four charges there are for, if you know, amounting to $270,000?

A. $150,000 of that amount was a loan, and the balance, $120,000, was stock.

Q. Was the last item in 1838 a loan?

A. The last item in 1838 was a loan.

The Special Master: That is $150,000?

A. $1500,00.

By Mr. McClintic:

Q. What do you mean when you say $120,000 was stock?

A. It was stock owned by the State in the Winchester and Potomac Railroad?

Q. Was the Winchester & Potomac Railroad Company a corporation under the laws of Virginia?

A. Yes, it was a corporation.

Q. A corporation under the laws of Virginia?

A. Yes.

Q. And the State purchased—
A. $120,000 worth of stock.

By the Special Master:
Q. And the balance of the $270,000, is accounted for by the loan of $150,000?
A. $150,000; yes, sir.
Q. Which of these items were payments on account of the stock?
A. The first three.
Q. Those were installments paid on account of stock? 529
A. Yes, sir.
Q. And the other was a loan?
A. Yes, sir.
Q. What became of the loan? Is it still outstanding?
A. No; the loan was converted into an annuity.

By Mr. McClintic:
Q. Go ahead, Mr. Dixey, and state the facts which appear from the record of Virginia in reference to that railroad, if you have them.
A. Well, the State—
Q. Do you desire this memorandum you made?
A. I would like it; yes sir.
Mr. McClintic: Here is a memorandum which he gave to me, if your Honor please.
Mr. Harrison: He can refresh his memory by looking at it, but we do not expect him to read the manuscript.
Mr. McClintic: No; I do not expect him to read it, but I expect him to refresh his memory as to dates and amounts, and things like that. This has all been done by manuscript.
The Special Master: The distinction in getting the result is not very profound.
Mr. McClintic: Not in a case of this kind, especially.
The Special Master: Mr. Harrison is perfectly correct 530 from a technical standpoint.
Mr. Spooner: He should not be allowed, perhaps to adopt as his testimony a memorandum, but he can read it.
The Special Master: I guess this witness is on to the method by which he can reach the result all right.
A. The Winchester & Potomac railroad was incorporated by the Act of April 8th, 1831, at a capital of $300,000 par value of $25 per share, a railroad from Winchester to some convenient point on the Potomac River at or near Harpers Ferry. Appropriations by the State: Under act of March 14, 1832, $75,000, the Act of January 31, 1833, $45,000, making a total of $120,000. That was paid as a stock subscription.

By the Special Master:

Q. Were these three sums that are stated in plaintiff's Exhibit C-1, installments paid from those two appropriations?

A. Yes, sir.

Q. They are the sums covered by the appropriation?

A. Yes; $120,000. By the Act of February 13, 1838, a loan to the Company was made, of $150,000, making up that sum of $270,000. Then by the act of March 25, 1843, the capital stock was increased to $481,220, the whole amount to be taken by the State, the increase not to exceed the amount due the State for the loan, with interest on July 1, 1843, said increase to be reconverted into a debt whenever the company failed to pay a dividend of 3 per cent on the whole of the State stock, provided that such dividend did not exceed 6 per cent on the debt so converted, under the 531
Act. No dividend was received by the State, nor were there received any dividends, either before or after this Act. The companies paid only the interest on the loan of $150,000 in the years 1839 and 1840. By the Act of February 24, 1846, the State accepted an annuity of $5,000 in lieu of the interest in the debt and dividends on the stock, the collection of the debt to be postponed so long as the payment of the annuity was continued.

By Mr. McClintic:

Q. How long was that annuity paid?

A. The annuity was paid in each year from 1848 to 1860, inclusive, a total of $65,000, and the last annuity was received on July 27th 1861, and was for the one due November 1, 1861.

Q. Subsequent to the 1st of January 1861, what was done with this matter by the State of Virginia, as shown by her books or her acts of the Legislature?

A. With the stock?

Q. Yes.

The Special Master: The annuity.

A. The stock was surrendered .

The Special Master: Surrendered by whom?

A. Just a minute.

By Mr. McClintic:

Q. Had not the stock been commuted into an annuity?

A. Yes. I might just as well go ahead with this memorandum I have made on it. On February 22, 1868, the State of Virginia passed an act providing that the sum of $83,333.33, which was 532
the principal sum owing, which seems to have been arrived at as the principal of the $5,000 annuity for one year at 6 per cent, together with all interest thereon, should be paid into the State

treasury on or before January 1, 1868, such payment to be made in any bonds of the State at their par value, and upon such payment being made, the claim of the State against the Company shall be lifted and discharged, under this Act, there was paid into the treasury the following stocks. As to that the record is not entirely clear.

By Mr. McClintic:

Q. Mr. Dixey, let me interrupt you. Is not that date, February 22, which you called 1868, a mistake?

A. Well, it is 1868 here. I cannot give the date from memory.

Q. We will call it up again in another way.

Mr. Spooner: What was the date?

Mr. McClintic: 1866.

A. Under this Act there were paid into the Treasury the following, apparently: Old registered bonds, $45,000, and new registered bonds, representing the funded interest of $66,130.90, making $111,130.90, upon whichthere was due in accrued interest $7,387.22, making a total of $118,518.12. The principal of the annuity was $83,333.33, and the interest on the same would have been $35,184.79. There were 4,800 shares of stock, at a value of $120,000.

Q. State if you found anything else on the books of Virginia in relation to this?

A. This memorandum was made before we made further discoveries. The stock was actually surrendered, and it shows on the books it was surendered in connection with this annuity in consideration for the anuity, and it was wiped off. 533

By the Special Master:

Q. Was all the stock converted into an annuity?

A. Yes, sir; that $120,000 owned by the State.

Q. The amount of the State's original purchase was subsequently converted into an annuity?

A. Yes, sir.

Q. That is the annuity you have been speaking of?

A. That is the annuity that is spoken of.

By Mr. McClintic:

Q. Does the Act show that the annuity was in the place of the loan as well as the stock?

A. Of the loan and the stock; yes, sir.

The Special Master: Then the loan and the stock were both merged in the annuity?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. There was interest paid on that $150,000 for two years, I believe. Was that 6 per cent interest?

A. Yes, sir.

Q. Then, Mr. Dixey, so far as this charge is concerned of $168,750, being 62½ per cent. of the $270,000, that is a charge for something which Virginia has entirely disposed of herself?

A. Prior to this date; yes, sir. She had disposed of her 534 interest in it altogether.

Q. And all the proceeds from that disposal of that interest went to the State of Virginia?

A. Yes; West Virginia got no benefit from it, so far as we find in the record.

By the Special Master:

Q. That is, West Virginia did not get anything from the proceeds of the transaction?

A. No, sir.

Q. Mr. Dixey, to what extent does the aggregate of these items you have in defendant's Exhibit C-1 differ from the similar aggregate in plaintiff's Exhibit C-1?

A. I cannot say. We have not been able to reconcile them . They cover different periods of time. Do you mean as a total?

Q. Yes.

A. They include in their items a great list of charges against West Virginia that we do not include at all. That is, they include stock companies in their exhibit that we do not include in our C-1 at all, so that a reconciliation of the account would really be the substitution of one account for the other.

By Mr. Harrison:

Q. Do you include in those items anywhere any of the items you are speaking of?

A. I believe they will be presented for consideration sometimes.

Q. I am asking you the question, do you include them?

A. Not in this exhibit. 535

Q. I understand that, but I ask you if you include them anywhere.

A. The stock of the Company?

Q. Yes.

A. I have told you we do include them, but not in this exhibit.

Q. When you say Exhibit C includes a great many items that you do not include at all, you do not mean to say you do not include them somewhere else?

A. I was talking of this exhibit.

The Special Master: What I wanted to get, as near as I could, was a concrete statement of the points of difference. Of course where there are no differences I have no worry. Where there are, then I have.

Mr. McClintic: All the stocks which they include in their No. 3, we eliminate from our No. 3.

By the Special Master:

Q. That takes care of all that class of items. Then as to the *quoad* other items do you disagree?

A. Yes, sir; frequently.

Q. If without any difficulty you can have a memorandum of the places where you disagree, I could have before me just where the elements of disagreement are.

A. Have you their schedule?

Q. Yes. 536

A. I can mark it.

Q. I wish you would do that—either that or make a separate statement.

A. Well, it would be very complicated and very long.

Q. Very well; you take their schedule.

A. And it is hard to reconcile it in any way that is intelligible, because there are so very many, many items of difference.

Q. But I have got to have this in the end, you know, so that I can have it in some concrete way, and see the points of difference. Then I will get the contentions of both parties upon those points.

A. Do you want the amounts or the difference?

Q. Give me the items and the amounts, yes, if you can do so without too much trouble. This is simply for my convenience later. When I come to state the accounts, I want to see what there is that is not disputed. Then I will take the disputes, and take care of them.

The hearing is now adjourned until to-morrow morning at 10 o'clock.

(The hearing, at 5 o'clock P. M., was adjourned until Friday, May 7, 1909, at 10 o'clock A. M.

[*Vol. 6.*]

[May 7, 1909.]

THOMAS BIRD DIXCY,
resumed the stand for further direct examination.

By Mr. McClintic:

Q. When we closed yesterday, Mr. Dixcy, we were discuss- 537
ing Defendant's Exhibit C-1. Please state to the Commissioner whether you made up the details of that report, or only the totals thereof; and if you did not make the details, who did make them for you.

A. The report as to totals was examined and verified by me. The details going to make up those totals were not made by me. The details statements were made by Mr. Clifford E. Scoville.

Q. Mr. Scoville, I believe you said, was your chief of staff, or employe?

A. Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

[Mr. McClintic]: 577

There is another matter which we desire to bring up, regarding *the Covington & Ohio Railroad*, what is now the Chesapeake and Ohio Railroad. We desire to offer (and also of which we will have typewritten copies made and filed for the benefit of your Honor and counsel) the Act of March 1st, 1866, of the State of West Virginia (page 127), incorporating the Covington & Ohio Railroad Company; the Act of February 26, 1866, (page 317) of the State of Virginia incorporating the Covington & Ohio Railroad Company; the Act of February 26, 1867, (page 102) of the State of West Virginia in relation to the same; also the act of Virginia of March 1st, 1867, relating to the same matter.

I thought I had an additional memorandum, but I cannot put my finger on it at this moment. Anyhow, also an Act of the two States afterwards ratifying a contract made and containing 578
a copy of a contract made between the Virginia Central Railroad Company and Commissioners appointed by the State of Virginia and the State of West Virginia in relation to the Covington & Ohio Railroad Company and the Virginia Central Railroad Company.

Mr. Conrad: Have you a copy of that in your hand?

Mr. McClintic: I had a memorandum of it a moment ago. Yes, here it is. The contract is dated on the 31st day of August, 1868.

The Special Master: Does not that refer to the Act?

Mr. McClintic: It recites the previous Acts; but there was a sub-

sequent Act of the State. The Act of the Legislature of West Virginia was passed January 26, 1870, ratifying that, and the State of Virginia passed an Act ratifying it.

Mr. Anderson: What was the date of the Act in regard to the Chesapeake & Ohio Railroad?

Mr. McClintic: I think that was the Act of 1867.

Mr. Anderson: They were concurrent Acts of the two States?

Mr. McClintic: Yes, sir; I have called attention to the fact that the Acts are practically the same—and the same ratifying the contract.

The Special Master: You mean they were practically contemporaneous?

Mr. McClintic: Yes, sir.

The Special Master: That will be admitted, then, so it will show on the record 579

Mr. Anderson: We object to it as irrelevant, to any account or—

The Special Master: In the absence of looking at the Acts, it may appear that all legislation subsequent to 1863 is objected to on the ground that it is irrelevant. I will admit it *de bene* because it is impossible for me to pass on it now.

By Mr. McClintic:

Q. Are you familiar with the details of the account of the Covington & Ohio Railroad; or was that made up by Mr. Scoville?

A. The details of that were prepared by Mr. Scoville.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

The Special Master: Now take up your next schedule 623

By Mr. Harrison:

Q. The third paragraph of the decree directs an inquiry as to all expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted. Your statement filed as Defendant's Exhibit C-1 is responsive to that inquiry, is it not? I think it was C-1.

Q. It was prepared for the information of counsel.

The Special Master: Yes; it is Defendant's Exhibit C-1.

By Mr. Harrison:

Q. It was prepared for the information of counsel under that inquiry?

A. I may say that Major Conrad and yourself objected to my offering anything responsive to the decree. I am simply avoiding that.

Mr. Conrad: Not at all. You are an accountant employed for that purpose.

By Mr. Harrison:

Q. You did not offer it. It has been offered by counsel for you.

A. It was prepared in accordance with the decree.

Q. The date from which you started the computation, as 624
you have explained heretofore, was March 19, 1823?

A. Yes, sir.

Q. Will you please state the difference in the result ascertained by your statement under that paragraph 3, and the result ascertained by Mr. Potter under the same paragraph?

A. You mean state it in dollars and cents?

Q. In dollars and cents. The result, I say.

The Special Master: You mean by that the difference in the total?

Mr. Harrison: The total; the difference in the result.

The Special Master: The difference between the aggregates found on your schedule and the aggregate found on the schedule presented by the plaintiff?

Mr. Harrison: That is right.

The Special Master: Let me see if I have it right. The aggregate in the Plaintiff's schedule, found on page 19, is $3,147,547.

Mr. McClintic: No, sir; that is the second part. The schedule is made in two parts.

Mr. Harrison: There are two parts. You will have to add the two.

Mr. McClintic: On page 3 of the Exhibit you will find $2,674,401.-04. You add those two together to make the total of theirs. If my addition is correct, it makes $5,821,949.01.

The Special Master: Without running back, I assumed that one schedule included them both.

A. In accordance with Virginia's exhibit the total is $5,821,949.01. The total in accordance with West Virginia's exhibit is $1,
455,196.12. The difference is an excess on the Virginia ex- 625
hibit of $4,366,752.89.

Mr. McClintic: I call your attention to the fact, Mr. Dixey, that $25,000 was withdrawn from the West Virginia Exhibit, which would make that much further reduction and greater difference.

A. It should be added to that.

The Special Master: That would increase the difference.

Mr. McClintic: Yes; it would increase the difference $25,000.

The Special Master: He has stated it near enough for all practical purposes.

Mr. Harrison: There are possibly other items.

Mr. McClintic: Yes; there were three other items I had forgotten.

Mr. Conrad: Some roads.

Mr. McClintic: Yes; three roads.

Mr. Harrison: I prefer to take the statements as they are.

A. Well, on the statements as they are, it is as I have stated.

Mr. Harrison: In other words, according to the schedules prepared by yourself and Mr. Potter, respectively—

The Special Master: Before any change was made.

Mr. Harrison: Before any suggested changes were made in the West Virginia schedule, the Virginia exhibit shows that $4,366,752.89 was expended by Virginia in the territory now constituting the State of West Virginia in excess of the amount shown by your schedule. 626

A. Not before any suggested changes were made, Mr. Harrison: It was suggested when the schedules were originally submitted to Attorney General Anderson that counsel reserved the right to amend them either by elimination or division.

Mr. Anderson: That was stated to me in writing.

A. In writing; yes, sir.

Mr. Harrison: When I said suggested changes, I meant suggested here.

The Special Master: Mr. Harrison meant the schedules presented here.

Mr. Harrison: I am talking about schedules presented here.

A. Before any changes were actually made in them, that was the difference.

The Special Master: The changes will show for themselves. A further inquiry will develop the other facts.

By Mr. Harrison:

Q. In your statement of money expended in the territory of West Virginia, do you include amounts invested by Virginia in the stock of joint stock companies?

A. I do not.

Q. Which constructed works of internal improvement in the State?

A. I do not.

Q. Why not?

A. Under instructions from counsel. 627

Q. If the State spent, through the medium of a purchase of $500,000 worth of stock, to illustrate, $500,000 in the construction of a road, would not that be money expended in West Virginia?

A. Not by the State.

The Special Master: What was your question, Mr. Harrison? If

the State spent that amount of money in the stock of the corporation that built the road?

Mr. Harrison: That built the road—if that would not be an expenditure by the State of $500,000 in the construction of that road, as much so as if it had been spent—

The Special Master: Directly?

Mr. Harrison: Directly.

By Mr. Harrison:

Q. You say you think not.

A. Not by the State. That is my interpretation.

The Special Master: He stated the account on the other hypothesis.

Mr. Harrison: Yes.

By Mr. Harrison:

Q. Then your account of moneys expended by the State in the construction of works of internal improvement in the State of West Virginia through the medium of her purchase of stock in joint stock companies, is excluded from your computation?

A. All subscriptions to the capital stock of stock companies are excluded from this account.

Q. You show on page 4 of your schedule C-1 total expenditures on account of appropriations for turnpikes and roads 628
lying wholly within the territory now constituting the State of West Virginia, of $425,418.35. That I understand takes no account of any other expenditure by the State of Virginia through stock subscriptions to joint stock companies that built the road?

A. It is direct expenditures under appropriations.

Q. Now, have you carried into any schedule the amounts invested by the State in stock subscriptions to works of internal improvement?

A. Yes, sir.

Q. Under what schedule?

A. It is shown on our schedule No. 7, defendant's Exhibit G-1.

Q. So then on the threshold your statement of the account under paragraph 3 of the decree differs from Mr. Potter's in that you have not included moneys expended through the medium of subscriptions to the stock of joint stock companies?

A. That is essentially different.

By the Special Master:

Q. Does that account for the whole discrepancy?

A. No, sir; there are other variations, but that is the major part of it, by far.

Q. This I imagine could be reconciled by conference between the accountants?

A. Well, it takes in this matter of the beginning of the debt. It could not be done by a conference.

Q. Of course we understand that. 629

Mr. Anderson: There is very little of it?

A. There is very little of it, but I mean it could not be reconciled absolutely.

The Special Master: It would be reconciled in the sense of being agreed upon as to the items that were expended, and then disclosing those about which no agreement can be had?

A. Yes, sir.

By Mr. Harrison:

Q. I understand the difference, as you have just stated to the Master, growing out of the method of stating this account, in that you have excluded and Mr. Potter has included subscriptions to joint stock companies, constitutes the major difference between you in your statement under that paragraph of the decree?

A. That is true; yes, sir.

Q. Of course that difference applies in your recapitulation on page 4 of your statement to the second item, namely, total expenditures on account of appropriations to interstate roads. That same difference enters into that statement?

A. Interstate roads?

Q. I call them interstate.

A. Yes; I understand what you mean, sir. I am just locating the items.

Q. Look at your recapitulation.

A. Yes; I am looking at it. I want to identify it absolutely. Well, all that difference is not located there, not located in that item. 630

Q. I did not say all the difference was.

A. There is a difference there.

Q. But I say that difference enters into that.

A. Oh, yes.

Q. Now, you show $900,577.77 as the total expenditures on account of appropriations for turnpikes and roads lying in the two States?

A. Yes, sir.

Q. And the same difference enters into that computation as entered into the first item?

A. Yes, sir.

Q. Of course there may be other differences?

A. Yes, sir; that is true.

Q. But your answer holds good as to that, that it is the major difference.

A. Yes, sir.

Q. The third item in your recapitulation, page 4, shows $129,200

as the total expenditures on account of additional appropriations for purposes within the territory now constituting the State of West Virginia. Of what items is that $129,200 made up? I simply want to get it on the record?

A. There are three items shown on that same page. Shall I state them?

Q. Yes.

A. Coal River Bridge, $3,000, Coal River improvements, $1,200, Trans-Alleghany Lunatic Asylum, at Weston, for building, $125,000, as shown on the page. 631

Q. Making a total of $129,200?

A. Yes, sir.

Q. And the aggregate of those three items gives $1,455,196.12, which you report as the total amount of money expended by the Commonwealth of Virginia in the territory now constituting the State of West Virginia?

A. That is right; yes, sir.

Q. Now, as illustrating the method in which the two accounts were stated, I will call your attention to an item on your statement, page 2, of the Moorefield and Allegheny Turnpike Company, wherein you include an item of $4,500 for building that turnpike, or building what is called the stemp to Petersburg, in West Virginia. That is correct, is it not?

A. Yes, sir.

Q. If you will look at Mr. Potter's Exhibit C-1, on page 12, under that same item, Moorefield and Allegheny Turnpike, you will find that gives the total amount expended on that turnpike in the State of West Virginia at $13,279.78, made up of two items, one of $4,500, which you have on your statement, and the other of $8,779.78.

A. That is correct.

Q. Now, please state how that $8,779.78 is shown to have been expended by Mr. Potter's statement?

A. As shown to have been expended in 1850, $3,090; in 1851, $4,748.79; in 1852, $565.99; in 1853, $375.

Q. Those, then, are the several appropriations for stock in that turnpike?

A. It does not say that they are, in Mr. Potter's statement. 632

Q. Is it a fact?

The Special Master: Do you know whether they are or not?

A. I think they are; yes, sir.

By Mr. Harrison:

Q. Where do you show those aggregate sums?

The Special Master: In Schedule 7.

A. I will refer to Schedule 7.

Mr. McClintic: He does not show that anywhere in the construction account.

Mr. Harrison: Let us see if he does not.

Mr. McClintic: At least, if he did, it was against my direction.

A. We show on page 4 of Exhibit 7—

The Special Master: No; Defendant's Exhibit G-1.

A. G-1; yes, sir. I beg your pardon.

By Mr. Harrison:

Q. On what page?

A. On page 4.

Q. You have there Moorefield & Allegheny Turnpike Company, $8,779.78?

A. Yes; as the amount paid by the Commonwealth.

Q. That is precisely the same amount shown on Mr. Potter's statement under that item, is it not?

A. That is correct; yes, sir.

Q. So that you carry that into your item 7 as a stock subscription?

A. A stock subscription. 633

Q. To the stock of that company?

A. To the stock of that company.

Q. Paid for by the Commonwealth?

A. Paid for by the Commonwealth.

Q. So that when you say Mr. Potter's statement does not show that, you do not mean to say that is not true, whether it shows it or not?

A. No; I mean to say it does not show it as a stock subscription.

The Special Master: What he meant was that the statement does not show on its face that it was for stock?

A. Yes, sir; I did not mean to controvert the item at all. I mean to say it did not show, to me, that it was a stock subscription.

The Special Master: Mr. Harrison simply uses it as an illustration of the difference between the two statements?

Mr. Harrison: That is my object, to show the difference.

By Mr. Harrison:

Q. On what theory of stating the accounts can you illustrate other differences between the two statements? You have accounted for the larger difference in this method of proving stock subscriptions?

A. The account in some items includes items prior to the period we have stated.

Q. That might be, but—

By the Special Master: 634

Q. Right on that point, does the account submitted by the plaintiff include some items prior to March 19, 1823?

A. Yes, sir.

Q. If you were to harmonize your account with that submitted by the plaintiff, what else would you have to do except to add such items as appear in that account of yours, so far as this exhibit is concerned?

A. There are some deductions from the plaintiff's exhibit for items added after January 1, 1861, and—

Q. I am referring now to *quoad* the beginning of the account. If you wanted to harmonize your account with the account submitted by the plaintiff, what else would you have to do with the exhibit now under discussion than to add the sums that appear by the report of the plaintiff's accountant to have been expended prior to March 19, 1823? That is, what other computations would it involve, if any, except the mere addition?

A. There are numbers, your Honor. We differ in a great many instances as to the amount that has been charged to West Virginia under 3. There are differences in scaling the mileage.

Q. That is not the question I am asking. The question I am asking you is this, Mr. Dixey. The plaintiff's account begins on October 1, 1819. Your account begins March 19, 1823. Now, as to the items that may appear in the plaintiff's account during that period, if you had occasion to accommodate your account to theirs, or to harmonize with them, what else would you have to do as 635
a matter of mathematical computation other than to add the accounts thus omitted to yours—anything in connection with this exhibit?

A. Well, there is nothing that occurs to me, but I don't want to commit myself absolutely on that. I don't know; but there is nothing that occurs to me.

Q. So far as you are at present advised, you would not have to do anything except to make that addition?

A. I think that would be all.

By Mr. Harrison:

Q. In order to see what further differences there are between you, you say Virginia's account contains items up to 1861 that yours does not contain?

A. Yes, sir.

Q. Do you show on your statement anything expended by Virginia for the Letart Falls & West Columbia Turnpike?

A. Under what schedule?

The Special Master: This particular schedule.

Mr. Harrison: Under 3.

The Special Master: Either in Defendant's Exhibit C-1 or I
fendant's Exhibit G-1, which are the two exhibits including expen
itures of this character.

A. What page is that on, Mr. Harrison?

Q. On your exhibit?

A. No; on the plaintiff's exhibit.

Q. On ours it is page 11.

The Special Master: Mr. Harrison is referring to page 11 of t
Plaintiff's Exhibit.

6

By Mr. Harrison:

Q. Yes; our exhibit. If you will look at page 11 of plaintif
Exhibit C-1 you will find that $2,950 is charged there for money e
pended by the Commonwealth of Virginia in West Virginia for t
construction of the Letart Falls and West Columbia Turnpike. Do
your statement include any or all of that item?

The Special Master: What statement do you refer to, Mr. Har
son; Defendant's Exhibit C?

Mr. Harrison: I mean the corresponding statement.

The Special Master: Or do you refer to defendant's Exhibit
or both?

Mr. Harrison: Exhibit C.

The Special Master: Whether that includes it?

Mr. Harrison: Yes; that is the one that deals with paragraph
of the decree.

A. That is a stock company, and no stock companies are includ
in this statement.

By Mr. Harrison:

Q. None are included there?

A. No, sir.

Q. Look at your Exhibit 7 and see if you have an account of a
others there? Exhibit G-1 I believe it is.

The Special Master: It refers to paragraph 7.

A. We show the—

Q. How much do you show?

A. Letart Falls and West Columbia Turnpike Company, 6
amount paid by the Commonwealth, $2,350.

Q. Then you have excluded from your statement there $600, ha
you not?

A. Yes, sir.

Q. Shown by Mr. Potter?

A. Yes, sir; there is that difference of $600.

Q. Why did you do that?

A. That is shown in 1861 on Mr. Potter's statement. We did n
include items of expenditure in 1861.

Q. Why did you not do it? It was an obligation contracted before 1861, was it not?

A. I will simply say, in regard to that, we did not include them by the instruction of counsel.

The Special Master: As I understand it, their statement stops right short on January 1, 1861?

Mr. Hogg: On the subject of expenditures.

The Special Master: Nothing appears up to that date to have been expended in connection with the particular item where it would not be disclosed by your item, whether it was expended afterwards or whether there was any prior obligation by virtue of which the expenditure was made?

A. That is true.

The Special Master: You are not reporting the liabilities. You are reporting the actual expenditures up to that time. Am I correct in that statement?

A. Yes, sir.

The Special Master: That is what you wanted, Mr. Harrison?

A. Yes, sir; that is right. Counsel for West Virginia say they stop short with 1861, so far as expenditures were con- 638
cerned.

By Mr. Harrison:

Q. Do they go beyond 1861 in the matter of other transactions; do you know?

A. Our accounting stops at January 1, 1861.

Q. Both as to expenditures and everything else?

A. On all acounts, so far as the accounts are concerned.

A. Well, as far as any charges and disbursements direct and receipts are concerned, it stops in 1861.

Mr. Anderson: Except as to the statement you have sent for?

By the Special Master:

Q. As far as the charges and credits go which are predicated upon actual cash transactions, they stop on January 1, 1861?

A. No, sir.

Q. On both sides of the account?

A. Yes, sir.

Mr. Harrison: Did you include all payments made up to that date?

The Special Master: Do you mean by receipts?

Mr. Harrison: Yes, sir.

A. We included all in one account or the other—no; let me modify that. We excluded a large number of claims. They are all included in our general balance that we have offered here.

Mr. Anderson: Have you gotten that yet? 639

A. It had not arrived when I last heard, Major It will not take long to prepare it when it does come.

By Mr. Harrison:

Q. I want to know if this was a part of your theory upon whic your accounting has been constructed. If I correctly understan your testimony that has gone before, it sometimes occurred, whe all payments had been made prior to 1861, that you excluded the because it appeared that in subsequent years, in the 60's or 70' there has been some change or sale of the road, or stock, or wha not. You therefore excluded the investments that had been mad and paid before 1861 because of some subsequent change. Is tha true?

A. I don't get just exactly the force of that, Mr. Harrison.

Q. Take some road. I cannot think of the name of it, but it ha frequently occurred here that you have referred to the fact that road had been sold after the War, or given to a county, a presen made of it to the county. Therefore you took no account of wha the State expended.

Mr. McClintic: Those were before the War, Mr. Harrison.

Mr. Harrison: Well, whether it was before the War or since th War.

The Special Master: Have you not in mind the Covington railroad

Mr. Harrison: That is one.

The Special Master: That is the only one I had in mind as 64 to which they raised that question.

Mr. Harrison: There was a million or more dollars involved i the Covington & Ohio transaction?

The Special Master: Yes; that is true. That is the only item have in mind as to which they raised a question of that character?

A. So far as actual records, actual cash receipts and disburse ments, our accounting closed on January 1, 1861, or rather, at th close of business December 31, 1860. Where there were question that affected the value of the property or West Virginia's interest i it at that time, affected by later evidence, we included these an showed them on the schedule.

Q. Now, look on your schedule C-1, page 3, at the Franklin an Monterey Turnpike. Do you see that?

The Special Master: The Franklin & Monterey Road. Is tha what you mean?

Mr. Harrison: Yes, sir; that is what it is called.

The Special Master: There are so many light variations of thes names, that we want to get them exact.

By Mr. Harrison:

Q. Bearing that item in mind, will you say whether or not yo take account there of a draft for $305.91 given by the State of Vi ginia in payment of a subscription to stock of that company on th 1st of October, 1855? It may have been a direct payment. I d

not know whether it was a stock subscription or not. I want to know if you took account of that draft?

A. Personally, I have no knowledge of that. 641

Q. You have no knowledge of that at all?

A. Personally, no sir.

The Special Master: Where is that item on your exhibit?

Mr. Harrison: Exhibit C-1, page 1, and our exhibit includes that draft, which was given October 1, 1855, and paid in 1861. I just simply want to present that.

A. What was the amount?

Q. $305.91. About that you know nothing?

A. No; not of my personal knowledge. I have a note here that I did not make personal.

Q. I only want what you know personally about it. Mr. Dixey, would you have any difficulty in ascertaining, in conjunction with Mr. Potter, the difference between your two statements, growing out of obligations contracted before 1861, but paid after 1861?

A. I think not.

Q. You would not have any difficulty in that?

A. No.

Q. It would not be a very material item?

A. There are only a comparatively few items.

Q. They would possibly be comparatively few, but would it constitute some of the difference?

A. Yes, sir.

Q. I understand you to say that some differences may exist in your two statements growing out of the mileage allowed for the improvements in the respective States?

A. Yes, sir.

The Special Master: That is, the manner in which the division of the item was made, predicated upon the mileage.

Mr. Harrison: Well, I think the division was made in the 642 same way, on a percentage division, was it not?

A. Frequently. Not altogether.

The Special Master: But the percentage upon which the result was reached. They may have adopted different lengths in their computations. That is what you have in your mind, is it not?

Mr. Harrison: Yes, sir. You would not have any difficulty in harmonizing that, between you and Mr. Potter, would you?

A. In a great many cases both were scaled to maps, and it was largely a matter of individuality. They were both doubtless done carefully, and it is the difference between one man's judgment and another man's judgment. I think those could be reconciled.

By the Special Master:

Q. You had the same original sources of information?

A. Yes, sir; we did have.

Q. And two experts together ought to be able to reach a result.

A. I think there will be no difficulty about reconciling those percentages.

By Mr. Harrison:

Q. The difference might have depended, as you say, upon the judgment exercised by the man who did the scaling, and by the care with which he performed that work, but you think they could be readily ascertained and reconciled?

A. I think there would be no difficulty. There might be a 643
little give and take on each side.

Q. The differences, then, between your statements, which are so widely different in their results, grow out of the methods in which you stated the accounts respectively, as you have detailed?

A. Yes, sir.

Q. Are there any more discrepancies in actual figures?

A. Yes, sir.

The Special Master: That is, the details are negligible, but in the differences there is a great bulk of it that comes from the accounts stated?

A. That is right.

By Mr. Harrison:

Q. Mr. Dixcy, Mr. Potter includes in his statement C-1, showing moneys expended in West Virginia, the moneys expended for the construction of the Covington & Ohio Railroad?

A. Yes, sir.

Q. That is a very large item?

A. Yes, it is.

Q. It runs over a million dollars?

A. Yes. We do not include that.

Q. You have not included that anywhere?

A. No, sir.

Q. You said you did not include that, on the instructions of counsel?

A. That is right.

Q. There is another considerable item that will help to 644
make up the difference, the Winchester and Potomac Railroad, which Mr. Potter includes, amounting to $168,758.

A. That was excluded. We excluded that.

Q. You have excluded that entirely from your accounts?

A. Yes, sir.

The Special Master: In all the schedules?

Mr. Harrison: In all of them.

Mr. McClintic: Mr. Dixcy testified to that yesterday. That was one that Virginia dealt with herself before the War, or just after the War, and got paid for it.

By Mr. Harrison:

Q. You excluded that upon the instructions of counsel?

A. Yes, sir.

Mr. Anderson: That is their theory.

Mr. Spooner: It is not very much of a theory.

Mr. Harrison: Yes; it is altogether a theory.

Mr. McClintic: We think it is a demonstrated fact.

Mr. Conrad: I was counsel for that road a long time, and I have derived a great deal of information about it.

The Special Master: Do I understand it is the contention of the defense that the counsel was sold with the road?

Mr. Conrad: He has been badly sold on these statements that he has learned here.

Mr. McClintic: They are in your Virginia books. We have to take them, right or wrong.

Mr. Harrison: I just want to know the facts from this witness, that he knows no facts in connection with that, but included it under the instructions of counsel. 645

The Special Master: I understand him to so testify.

The Witness: I said it was excluded under the instructions of counsel. That is true; but we are in possession of facts in connection with it.

By Mr. Harrison:

Q. When you say "we," whom do you mean?

A. I mean we have it in our papers. I am not personally familiar with it at all.

Q. Has anything of that sort come in? I don't remember it. I am in the dark.

Mr. McClintic: Which road is that?

Mr. Harrison: The Winchester and Potomac, he is talking about. He says they are in possession of papers.

Mr. McClintic: Mr. Dixey testified to certain facts in connection with it, from a memorandum which his staff had made in relation to it, on yesterday.

Mr. Harrison: You call those facts?

The Special Master: The circumstances under which the road was disposed of, according to the contention of the defendants. That is what you mean, Mr. McClintic?

Mr. McClintic: Yes, sir. The Winchester and Potomac is still in existence, leased to the Baltimore & Ohio Railroad, but the Baltimore & Ohio Railroad got it in 1866 or or 1867.

Mr. Anderson: The Baltimore & Ohio was the lessee of it for a great many years.

Mr. McClintic: I think it is the lessee yet.

Mr. Anderson: Yes; but it owns a majority of the stock. 646

Mr. Conrad: It was the lessee for sixteen years without any authority from the Legislature of Virginia to lease or to hold it.

Mr. Harrison: Do I understand, Mr. McClintic, that your contention is that Virginia disposed of the road or gave it away, or did something, in 1867?

Mr. McClintic: Prior to that time, in 1846 or 1847—I cannot state the exact date—she passed an act commuting this stock and loan into an annuity, which was paid for a series of years, and then she sold the annuity. In the first place, we deny that we are responsible for loans made by Virginia to any municipality, incorporation or individual. We do not call that money spent in West Virginia, if that individual happened to live in West Virginia.

The Special Master: In the next place, you contend the loan has been subsequently paid?

Mr. McClintic: Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville.*]

By Mr. McClintic:

Q. We have filed here Defendant's Exhibit C-1. Please state, if you know, the charges made therein, of your own knowledge, or items entered, would be better, perhaps? 6

A. (Mr. Scoville) I do know as regards each and every item appearing on the schedule. That schedule I find charged— 6

The Special Master: On what page?

Q. (Continuing) On page 2.

"Brandonville, Kingwood and Evansville Road, $10,595.73. Please state the character of that charge and what it was for, and if there is any other thing in relation to that road, please state it.

A. The road was originally incorporated as a stock company in 1837, and in the following year the State made an appropriation for subscriptions to the stock. In 1847 and in 1857 additional appropriations were made.

Q. Were those additional appropriations for stock purposes?

A. They were for stock purposes, amounting in all to $18,000.

Q. What sum of money was paid out on that road for stock, if you have it there, and what for direct appropriation for work done?

A. The amount paid by direct appropriation—

By the Special Master:

Q. What do you mean by that, direct construction?

A. Direct construction on the road, as shown by the books, was $10,595.73.

Q. Was the State at that time a stockholder in the road?

A. The State was at that time a stockholder to the amount shown on the books; as to the amount paid on the stock subscriptions, it was $2,193.46.

Mr. Spooner: You mean by the State? 699

The Witness: Paid by the State on their subscriptions.

The Special Master: Is that the total amount that appears to have been paid by the State on its subscription?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Right at that point, what do the books show as to these stock subscriptions, as to there being other stockholders?

A. It does show that there were other stockholders.

Q. Do the books show whether these subscriptions for stock were paid by calls from directors of the Company, or in what way?

A. I think it can be said that in every case where the appropriation was made for the purchase of stock of any improvement company the payments by the State on account of that subscriptions were to be paid *pari passu* with the payments of individual stockholders.

Q. Now, take the next item below that, the Clarksville and Buchannan Road. Was that a road incorporated?

A. It was an incorporated company.

Q. And did the State spend some money thereon in addition to the stock it purchased?

A. It did.

Q. An amount stated on this exhibit?

A. The amount expended for other purposes than stock was $19,259.36, which was on account of an appropriation of $20,000 for macadamizing the road.

Q. I will next go to the item, "Kingwood and West Union Turnpike Company. What was the condition as to that, as 700 to its being an incorporated company, and the State also making a direct construction appropriation?

A. The Kingwood and West Union Turnpike Company was an incorporated company, and the State subscribed to its stock and also appropriated as a direct expenditure on the road $18,140.61.

The Special Master: Expended also, as well as appropriated?

The Witness: Expended that amount. It appropriated more than that sum, but that was actually expended.

Mr. Harrison: How much by direct appropriation and how much by stock?

The Special Master: $18,140.61 was the total direct expenditure, as I understood it.

The Witness: That is correct.

The Special Master: He had not stated the amount of stock.

Mr. Harrison: I thought he stated them separately.

The Special Master: No; he did not.

The Witness: The total amount paid on the stock subscription was $8,769.48.

By Mr. McClintic:

Q. How much was subscribed by the State?

A. $12,000

Q. On page 2, you have a road called the "Morgantown to Beverly Road, $12,000. Can you reconcile that charge with any charge made on Plaintiff's exhibit C-1?

A. Yes, sir.

Q. Please do so.

The total expenditure of $12,000 which we include under the title of Morgantown to Beverly road on West Virginia's exhibit is shown in two amounts on Plaintiff's Exhibit C-1,$2,724.

The Special Master: At what page? 70

The Witness: On page 5. Under Beverly and Clarksburg road; it is the fourth item from the bottom of the page.

The Special Master: What other item is that connected with?

The Witness: And an item on page 7, amounting to $9,276, under Monongalia County to Beverly and Clarksburg Road. That is the fifth amount extended into the total column, counting from the bottom of the page.

The Special Master: That seems to be page 11?

The Witness: I should have given the number as 11.

The Special Master: And those two make $12,000?

The Witness: Yes, sir.

By Mr. McClintic:

Q. You also have an item, page 2, Middlebourne & Pennsylvania Road, $6,252. Can you reconcile that with any charges made by Mr. Potter?

A. I cannot, no, sir.

The Special Master: Are not these items items that the two accountants could take up and reconcile?

Mr. McClintic: There is some confusion of the names of the companies.

The Special Master: They can do better sitting down and discussing it between themselves, probably.

By Mr. McClintic:

Q. On page 3 there is an item, South Fork of South Branch 70
of Potomac River to Petersburg and Hardy County Road; and on page 4 is the South Branch of Potomac River to Brock

Gap and Rockingham County road. Could you give an explanation of those two roads?

A. Yes, sir. The first road that you have referred to, on page 3 of our exhibit, South Branch of South Fork of Potomac River to Petersburg in Hardy County, on which there was expended $900, is wholly within the territory now constituting the State of West Virginia. The other item, South Branch of Potomac River, page 4, to Brock's Gap in Rockingham County, on which the total expenditure was $1,400, is in West Virginia, on a mileage basis, 29.41 per cent. I might say that is the full amount of the appropriation, and it is charged to the roads for which it was appropriated. Originally it was given to commissioners to be expended on these roads, and charged to the accounts of these commissioners, and carried that way on the books of the internal improvement fund for a number of years. Then, some time prior to 1861—between 1850 and 1860—they closed the accounts of those commissioners and opened new accounts under the titles of these roads, and in doing that they charged the $1,400 appropriation and expenditure to the road under that title "South Fork of South Branch of Potomac River to Petersburg in Hardy County" and the $900 to the other road. So that at the present time, on the books of the internal improvement fund, the $1,400 shows as expended on the south fork of South Branch of Potomac River to Petersburg in Hardy County Road; whereas it should show, as charged to the road through Brock's Gap, as shown on page 4 of our exhibit.

The Special Master: In transferring the items they got 703 them transposed?

The Witness: Yes, sir.

Mr. Anderson: The road was through Brock's Gap to what point?

The Witness: South Branch of Potomac River to Brock's Gap in Rockingham County.

Mr. Anderson: Part of it would be in West Virginia?

The Witness: Yes, sir.

The Special Master: And this report you have made is in accordance with the original entries and does not follow it after the transposition here made.

The Witness: That is it exactly.

By Mr. McClintic:

Q. On page 3, the Abbs Valley and Tug Road, $4,450; is that partly in Virginia and partly in West Virginia?

A. Yes, sir. Abbs Valley is in Tazewell County, in the present State of Virginia.

Q. This charge made by you here is the correct charge in your opinion?

A. It is.

Q. You made this division yourself, did you?

A. I made this division personally, yes, based on a mileage basis.

Q. The next item is Allegheny Mountain Turnpike, which has been wholly charged by Mr. Potter's account to West Virginia. Please state what you know about that?

A. I will have to refer to papers to get the location of the 704 beginning of that road.

(Continuing after reference to papers.) In the year 1834, there was an appropriation made to construct a road from Pendleton County to Pocahontas County. Both counties at that time were in the present State of West Virginia. The route laid out for that road is as follows. On the route of the road located from Stanton to Parkersburg, from Heevner's Store in the County of Pendleton, to Greenbrier river in the County of Pocahontas. From an inquiry which was made as to where Heevner's Store was located, we found that it was in that part of Pendleton County which in 1847 became Highland County, Virginia; so that the road is partly in both of the present States.

Mr. Anderson: If it is the same Heevner's Store that I know about it is now called Hightown.

Mr. McClintic: Yes, that is it.

Mr. Harrison: How long is that road?

The Witness: The reports of Volume 7 of the Board of Public Works gives the length of that road as 17 miles, 68 chains; and we were informed by individuals that reside along the road that it was eight miles in the present Highland County, Virginia.

By Mr. McClintic:

Q. On page 4, there is a charge, Trans-Allegheny Lunatic Asylum at Weston, $125,000. Did you examine some books I brought here a few days ago, from West Virginia, called the books of the restored government?

A. Those books were examined under my direction.

Q. Did you find anything as to the sum of $27,000 being 705 repaid into the treasury of the State?

A. The journal of the restored state of Virginia shows that $27,000 was paid into the Treasury of that State.

(Continuing after referring to book.) The $27,000 which has been referred to, and was deposited, according to the journal of the restored State, on July 22nd, 1861, one half in the Northwestern Bank at Wheeling, and one half in the Merchants' and Mechanics' Bank at Wheeling.

Mr. McClintic: On that same point, at this moment, I want to introduce as evidence the Auditor's report.

The Special Master: You had better have him read the entries that appear.

Mr. McClintic: Yes, we will have him do that.

The Special Master: The entries read as follows, appearing on page 4, under date of July 22, 1861. This is Wheeling, Virginia?

Mr. McClintic: Yes, Wheeling, Virginia, then.

The Special Master: Under the head of Wheeling, Virginia, July 22, 1861, appear the following entries.

The Witness: (Reading)

"Northwestern Bank at Wheeling.

"To certificate, John List, No. 7, Weston Asylum, $13,500."

The next entry reads as follows:

"Merchants and Mechanics Bank, Wheeling.

"To certificate, John List, Weston Lunatic Asylum, $13,500."

Both of those amounts are shown as deposited in the account kept in the ledger with those two banks. 706

By the Special Master:

Q. They are charged in the account for the two banks, and each bank is debited on that same date with the sum of $13,000?

A. That is correct.

Q. In the ledger account?

A. In the ledger account.

Mr. McClintic: I desire to introduce the auditor's report, Wheeling, October 1st, 1861, signed by the then Auditor of Virginia, Samuel Crane, in which appeared the following items: (Reading)

"From the Lunatic Asylum, West of the Allegheny Mountains, $27,000."

That is under the head of receipts. The whole report I desire to offer, but that is the only item I have.

The Special Master: That is the only item in the book to which you propose to refer?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Referring to plaintiff's Exhibit C-1, I find charged on page 1 thereof, Covington & Ohio Railroad, total, $1,212,354.85. Have you made any investigation of the amount expended on the Covington & Ohio Railroad by the State of Virginia?

A. Yes, sir.

Q. Please take the statement handed you. Was that made by you?

A. (After examination.) Yes, sir; this was made by me personally.

Q. Please state the total amount that you believe should 707
be charged to the amounts expended, if the court should decide that any amount was proper.

The Special Master: You mean by that, I suppose, what he finds by his investigation that the books show?

Mr. McClintic: Yes, sir. What he believes to be correct from his examination.

A. After analyzing each account appearing in the construction books of the Covington & Ohio Railroad as closely as the records and entries would allow, and applying all expenditures which these construction books show were for money expended in what is now the present State of West Virginia, and dividing on a mileage basis only such items as could not be applied direct, I have arrived at a charge against West Virginia of $1,146,462.52.

Q. And do you in that statement charge the whole Western Division to West Virginia?

A. Yes, sir.

Q. Beginning at what section and going west, do you charge all to West Virginia?

The Special Master: Is that an item that the two experts can reconcile in all probability? I am referring to the details.

Mr. Anderson: I think they ought to be able to do it.

Mr. Harrison: I think they can; I don't think there is any doubt about it.

Mr. McClintic: It is about between $65,000 and $75,000, 708
there is a difference of that much between them.

The Special Master: If they are unable to agree on any detail, cannot they give me the concrete facts in connection with the detail, so I can pass upon it?

Mr. McClintic: I think so.

The Special Master: If they can, that would save us a lot of time.

Mr. Harrison: Before you go on, I think it would be well for the witness to answer the last question, that is, as to what section he began with.

The Special Master: Well, you will have access to his memoranda.

The last question was repeated by the stenographer, as follows:

"Q. Beginning at what section and going west do you charge all to West Virginia?"

The Witness: I do not see it now, but we have it without doubt.

Mr. Harrison: You are not able to give it now?

The Witness: No, sir.

By Mr. McClintic:

Q. Did you make any examination of what appears, after the State of West Virginia was formed, on the books of West Virginia as to any sales made by the State of Virginia of its stock in the Blue Ridge Road, or any of those items?

A. Yes, sir; I did.

Q. What, if you know, was paid the State of Virginia by the Virginia Central or the Chesapeake & Ohio Railroad for the Blue Ridge Road?

Mr. Anderson: That is wholly in Virginia. I do not see 709 what it has to do with this inquiry.

Mr. McClintic: It has a good deal to do with the inquiry on our theory of the Covington & Ohio Railroad.

The Special Master: I will hear it *de bene.* Of course I cannot pass upon the force of it until I have all the facts before me. I will let it go in *de bene.*

Mr. Anderson: We merely enter an objection to it as irrelevant.

Mr. McClintic: I take it that all testimony is allowed on that theory. We have not objected many times for that reason.

The Special Master: Yes.

The Witness: The present State of Virginia received in 1870 from the Blue Ridge Railroad, $625.348.08 in State bonds and accrued interest on the State bonds.

By Mr. McClintic:

Q. From whom?

A. From the Chesapeake & Ohio Railroad Company.

Q. State, if you know, whether the State of Virginia was relieved of any guarantees on bonds of the Virginia Central Railroad by the Chesapeake & Ohio Railroad or the Virginia Central Railroad; and, if so, please state the amount?

A. The State of Virginia was relieved of the guarantee of bonds of the Virginia Central Railroad, amounting to $100,000; and it was relieved by the Chesapeake & Ohio Railroad Company, taking up those bonds.

Q. State, if you know, the par value at least of the stock of 710 the Virginia Central Railroad Company owned by the State of Virginia on the 1st of January 1861.

Mr. Anderson: We object to that. He does not know the value.

Mr. McClintic: I am simply asking for the par value.

Mr. Anderson: All right, if it is the par value.

A. I can't state what the par value was. I can only state that the State of Virginia had paid up to the 1st of January, 1861, $1,927,382.57 for stock in the Virginia Central Railroad. She had

paid that much on her subscriptions to the stock of the Virginia Central Railroad Company.

Q. What, if anything, did the Virginia Central Railroad owe the State at that time, if you know?

A. The railroad company owed the state $90,000 that had been loaned.

Q. Returning to Exhibit Plaintiff C-1, and referring to page 3, there is a road charged as the Strasburg and Capon Turnpike. Please explain, if you know, whether that road, or any part of it, is in the State of West Virginia?

A. The Strasburg and Capon Turnpike Company was incorporated in the year 1856. The route of the road was from Strasburg in the Shenendoah County and the present State of Virginia, to some point on the Winchester and Moorefield Road, at or near Hoff's gate. There was no report filed by that company which gave the exact location of the road. To get into the present State of West Virginia the road would have had to have gone over the Great 711
North Mountain, and on the maps which we had access to there is no such road shown. The road was to go from Strasburg in Shenendoah County, to some point at or near Hoff's Gate on the Winchester Road, and there is a road on the maps which I consulted, running from Strasburg to this Winchester and Moorefield Road, which would make this road entirely in the present State of Virginia.

The Special Master: You took it to be that road?

The Witness: Yes. I do not think the road went to Capon, which is in Hampshire County, and the present State of West Virginia, because the road to Capon from the Moorefield and Winchester Road was built by the latter road.

By Mr. Harrison:

Q. In that connection, did you examine the Board of Public Works Report, 1857, page 215?

A. I made no particular note of that. I made no note of information gotten from that report.

Q. You have no recollection on that subject?

A. No, sir.

Q. You have no memoranda showing it?

A. No, sir.

By Mr. McClintic:

Q. On the same page, Mr. Scoville, appears the Winchester and Potomac Railroad, charging West Virginia $168,750 (referring to

plaintiff's Exhibit C-1), and dividing it into four items. Please explain those items as to stock or loan or their character or 712
nature.

The Special Master: Is that page 3 at the bottom of the page?

Mr. McClintic: Yes, sir.

A. The first three items, aggregating $120,000 were paid by the State on account of its subscription to the stock of the Winchester and Potomac Railroad Company.

The item of $150,000 was loaned to the company.

In 1846 the Commonwealth of Virginia passed an act accepting in lieu of dividends on stock and interest on the loan, an annuity of $5,000. That annuity was paid in every year up to and including the year 1860. The ledger account, which carries the subscription of $120,000, to the stock, was closed on the books of the internal improvement fund with the explanation that the stock had been surrendered for the annuity.

After 1861, I think in 1866, the State of Virginia passed an act agreeing to accept stock or bonds of the State of Virginia in settlement of the principal of that annuity, and the State of Virginia did establish the principal of $83,333.33, which was the principal sum producing $5,000 annually at six per cent; the State accepted State bonds of Virginia for the $83,000 odd as principal, and the unpaid annuity up to the time of the settlement, amounting in all to $118,000.

Mr. Anderson: To satisfy the State bonds?

The Witness: Yes.

Mr. Anderson: That is bonds of the old State?

The Witness: Bonds of the old State. 713

By Mr. McClintic:

Q. Were there any notes, so far as you know, given to the State of Virginia for that loan, or how was it evidenced as a loan, if you remember?

A. The only evidence that I have seen is an entry of it on the original books kept by the second auditor, which shows the money as being received. Just what was given for it I do not know.

Q. So, the State's interest in that consisted of $120,000 worth of stock and $150,000 worth of loans?

A. Yes, sir.

Q. And it was settled, as you say?

A. Yes, sir.

Q. On page 4, I find the item, James River and Kanawha interest. Please tell the court what you know about an item there of $100,000 charge, called bonds to Kanawha Board, in 1860?

A. Under an Act passed by Virginia on March 23, 1860, the State

agreed to loan to the James River and Kanawha Company for the use of the Kanawha Board, which had been established to carry on the improvements of the Kanawha River, $200,000 in State bonds. I did not find that the $200,000 or $100,000, as shown on plaintiff's exhibit, had been turned over to the James River and Kanawha Company prior to January 1st, 1861.

Q. How much did you find had been turned over, if any sum, to the Kanawha Board?

A. $60,000.

Q. That was bonds of the State of Virginia under the Act 71
of March 23, 1860?

A. Yes, sir, as a loan to the James River and Kanawha—

By the Special Master:

Q. What date was the $60,000 of bonds turned over?

A. I haven't the exact date, but it was prior to January 1st, 1861

Q. It was during the year 1860?

A. During the year 1860.

By Mr. McClintic:

Q. That was only a loan to the James River and Kanawha Company, was it not?

A. Only a loan.

Q. The plaintiff has charged under that head something over $300,000; for Kanawha River, $91,666.72; extension of Kanawha Turnpike, $87,285.36; 82 per cent Kanawha turnpike, $144,772.86 Gauley Bridge, $1,167.68. Those were, if payments at all, only payments by the Company, were they not, for the purpose of construction or something?

A. Those payments, without attempting to say whether the amounts there are correct or not, were on account of the improvements of the James River Canal proposition made by the State, improvements carried on by the State, and expenditures made by the State. But under an act passed in 1832 the State surrendered its interest in the improvements, on the James River Canal to the newly incorporated James River and Kanawha Company for stock in that company. So that these payments are not charges against West Virginia as direct expenditures, but became during the
period under examination investments in the stock of the 71
James River and Kanawha Company.

Q. By the State of Virginia?

A. By the State of Virginia.

The Special Master: First they were investments, and afterwards converted into stock?

The Witness: Yes.

By Mr. McClintic:

Q. Were these particular investments made before 1832; were they not made long after 1832?

A. I can't say as to that; but I think they were made before 1832. They expended large sums before 1832.

Q. But were those large sums expended out yonder in West Virginia before 1832?

A. A very small proportion of the large sums were expended in West Virginia.

Q. Before 1832, was anything expended in West Virginia?

A. Yes, sir; they commenced.

Q. In West Virginia?

A. Yes, they commenced on the Kanawha Road before 1832.

Q. Have you investigated these particular charges here made and just read, as to the date when they were expended, and time, and so forth?

A. Yes, sir; I have.

Q. Have you the working papers that show them?

A. Yes, sir; I have.

Q. Could you get them immediately or later? 716

A. (After searching among papers.) 2I have them here.

Q. Please state, if you know, when those sums were expended, or such of them as were expended, as far as your papers show?

A. I cannot testify as to when it was expended without further papers. I find I have not the papers here which give the dates.

Q. Sometime later I wish you would make me a statement to that effect, and if we have opportunity we will show it.

Mr. Harrison: Do you know when the Act incorporating the James River and Kanawha Company became operative? It was passed in 1832, was it not?

The Witness: It became operative in June, 1835.

Mr. Anderson: That is, the Company was organized then?

The Witness: Yes, the Company was organized then.

By Mr. McClintic:

Q. On page 11, I believe it is, of Plaintiff's Exhibit C-1 (Defendant's Exhibit G-1), I find the item of $2,500 in 1847, charged on the Plaintiff's Exhibit, Morgan County road, from Bath to St. John's River, $2,500. Do you know anything about that?

A. That money was loaned to the trustees.

The Special Master: What is that item?

Mr. McClintic: Page 11, Exhibit Plaintiff's C-1; Morgan County road from Bath to St. John's River. It is a similar loan to the town of Bath to the one shown in our Exhibit G-1. I wanted to prove the fact by Mr. Scoville.

The Witness: The money was loaned to the trustees of the town of Bath, and had not been paid back into the Treasury 717
of the State prior to January 1st, 1861, and on that date stood as a loan against the trustees of the town of Bath.

Mr. Harrison: It was for the purpose of building that road, was it not?

The Witness: I don't know what the purpose was. I know it was a loan to the trustees of the town of Bath.

Mr. Harrison: Did not the record disclose any purpose at all?

The Special Master: What page is that found on in your exhibit G-1?

Mr. McClintic: It is noted on page 2, and then it is noted somewhere else later on.

The Special Master: Yes, I find it.

Mr. McClintic: Also on page 9. It is noted again on page 9.

By Mr. McClintic:

Q. On page 11 of Exhibit C-1, Louisa Fork of the Sandy River Road, $1,000. Did you find any such road in your examination?

A. I did not find any such road in the whole State of Virginia. I did find that that road was in the present State of Kentucky.

Mr. Harrison: How did you find that; what source of information did you have?

The Witness: I don't think I mean the present State of Kentucky; I would like to withdraw that answer and consult the papers here.

Mr. Anderson: There is a Louisa Fork and a Levisa 718
Fork. The Levisa Fork is in Buchanan County, Virginia.

Mr. McClintic: The same fork depends a good deal on map. Sometimes it is "Louisa," and sometimes it is "Levisa."

Mr. Mollohan: When was that made?

The Witness: The appropriation was made in 1823. That road runs through Buchanan, Russell and Tazewell Counties, all in the present State of Virginia, being in the southwestern part of the State.

Mr. Harrison: What is the terminal point?

The Witness: This road was made in connection with a road built by the State of Kentucky, and the entire road, including what was built by Kentucky in Virginia, was intended to run from Mt. Sterling, in Kentucky, by way of Prestonburg, in the direction of Tazewell Court House, to intersect the main western road leading from Richmond to Abingdon. The Commissioners who had charge of the building of that road were directed to construct the road from the latter point, that is the road leading from Richmond to Abing-

don, thence up the Louisa Fork of the Big Sandy River, through the most practical route, through the rich lands of the Clinch River.

By Mr. Harrison:

Q. What act was that?

A. January 15, 1826.

Q. Have you got the page of the act?

A. Yes, sir; page 81.

By Mr. McClintic:

Q. On page 19, Mr. Scoville, I find charged the balance of 719
interest on bonds of the City of Wheeling, $15,115.64. State, if you know, whether that item was paid to the State of Virginia, and if so when?

A. That item was paid to the State of Virginia in the year 1867, with interest, which amounted to about $6,000, as shown by the books in the Auditor's office, the auditor of public accounts.

(Informal discussion followed, about the question of holding a night session, at the conclusion of which, at 5:40 o'clock P. M., a recess was taken until 8 o'clock P. M.)

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[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville.*]

The Special Master: Of course I have no objection to proceeding in this way, but as long as that understanding is practically entered into I think you will make more satisfactory progress by letting them in the first instance undertake to weed it out. With that exception are you through, Brother McClintic, with this witness?

Mr. McClintic: Just one moment. (Continuing after consultation among counsel.) I want to prove in some form, so as to get it into the record, the amount of tolls or dividends, dividends, I should say, paid in by these stock companies to Virginia prior to January 1, 1861. I mean all the road companies, the navigation companies, the bridge companies and things that paid dividends.

The Special Master: Have you a schedule?

Mr. McClintic: I haven't it prepared in such a way as to put it in as such.

The Special Master: Then why do you not have your experts prepare it in the interim?

Mr. McClintic: That can be put in, then, without going over in detail the items with this witness?

The Special Master: How is that?

Mr. McClintic: I say I can have the experts, Mr. Dixey and 784
Mr. Scoville, make a statement of that by roads and compa-

nies, showing the companies that did pay dividends, and a statemer that all others did not pay dividends. There are only a few tha did pay dividends.

The Special Master: Of course, when we suspend, we shall hav to suspend for the purpose of having another hearing, because ther are reports that have to be made by these experts. Brother M Clintic, you may have prepared your statement, and as soon as yo get it prepared submit it to the other side, so they will be prepare to criticise it if they have occasion to do so.

Mr. McClintic: I do not now think of anything that I want to as at this time. There are some things we will have to go into whe we get this in.

Mr. Spooner: I would like to put one or two questions upon matter concerning which you testified. I would like a little fulle information referring to these corporations, to the construction turnpikes, and bridges, and the like, navigation companies, and a that. I understood you to say that in no case—I mean those tha are set forth in these schedules—did Virginia subscribe for mo than three-fifths of the capital stock, and in some cases two-fifth and in other cases two-fifths.

The Special Master: And in some cases one-fifth.

Mr. Spooner: Some cases one-fifth.

The Witness: I do not think I made that statement.

The Special Master: Mr. Dixey made that statement.

7

By Mr. Spooner:

Q. Well, two-fifths or three-fifths. Did you testify, or did I i correctly understand you, that in no instance did the State of Vi ginia own all of the outstanding stock in any of those corporations

A. I do not recall any instance where the State of Virginia d own the entire outstanding capital stock.

Q. Where the State owned two-fifths, were there majority stoc holders owning the other three-fifths?

A. There were.

Q. And where the State owned three-fifths, there were minori stockholders owning the other two-fifths?

A. There were.

Q. Did you testify, or did you mean to be understood as testifyin that Virginia, in either case, made no payments upon the stoc subscriptions until the other stockholders had made payments their stock subscriptions?

A. I intended to convey just that impression.

Q. Was that by statutory provision?

A. It was. It was provided in the Acts making the appropriation It was the general rule and custom.

By the Special Master:

Q. That is, the payments were made upon call upon all the stockholders?

A. Yes, sir.

Q. The State paying in the same proportion that the private stockholders paid?

A. Yes, sir.

Q. And Virginia did not pay until the private stockholders had paid; is that what you stated?

Mr. Conrad: No, he did not state that. He is not a lawyer, 786
and he misunderstands it. As the Master suggests, it was simply a call.

Mr. Spooner: I understand—

Mr. Conrad: I know you understand, but he will do himself an injustice.

The Special Master: The question now is, whether the payment of the private subscribers was antecedent to the payment by the State.

The Witness: If the payments were made according to law, they were not antecedent. They were *pari passu* with the private subscriptions.

Cross Examination.

By Mr. Conrad:

Q. You have been examined upon this Auditor's report of Auditor Crane. We will offer it in evidence at the proper time. Now, as you have been examined on it, I want to ask you what you found in the course of your examination, what you found out about this report of Auditor Crane, made November 25, 1862.

Mr. Harrison. What auditor?

Mr. Conrad: Auditor of Public Accounts of the restored Government of Virginia.

Mr. Mollohan: The State of Virginia. There is no restored in it.

Mr. Conrad: I will read this. (Reading):

"It has about $400,000 worth of stock in the Northwestern bank at Wheeling standing in the name of the Commonwealth, part in the name of the Board of Public Works, and part in the 787
name of the Literary Fund. The State has $50,000 of stock or loans in the name of the Literary Fund in the bank at Fairmont, and from $50,000 to $70,000 in the Exchange bank at Weston, making about $500,000 in all. She is also a stockholder in the improvements of the Kanawha River, how much the Auditor does not know. The State is the owner of several important turnpike roads in the northwestern part of the State, and is a stockholder in many other turnpike and bridge companies. The power to control and use the

stock before and pending the settlement with the old State: Som legislation, therefore, upon the subject will be necessary."

Did you have occasion to look into this item of $500,000 mad up of these stocks referred to in this report?

A. Yes, sir; that has been covered.

Q. You have covered it with the amount of $500,000?

The Special Master: Covered in what?

The Witness: In the testimony that I have given this evening.

By Mr. Conrad:

Q. To this amount of $500,000?

A. As to the Northwestern Bank, $450,000 par value, all of whi is not paid in cash. As to the Fairmont Bank, $50,000 paid in cas

Q. I am referring to what the auditor says—

Mr. McClintic: That is the auditor of Virginia reporting to Virginia, is it not? 7

Mr. Conrad: To gratify you, I will assent to that statement.

By Mr. Conrad:

Q. I ask you if you have any further explanation to make of tha

The Special Master: Does the testimony you have given in co nection with that cover all you have to say about that?

A. Yes, sir.

Mr. Conrad: We will at the proper time ask to offer this repo in evidence. That is all I have to ask you, sir.

(The witness under examination, Mr. Scoville, was according excused from the witness stand.)

Mr. Conrad: There is another statement contained in anoth auditor's report, which, if the Court will permit me, as it is ve brief, I would like to read. This is a very noble aspiration.

(Reading):

"If, however, we succeed in making a new State, new expens will be necessary."

All this will be necessary! 7

"When all this has been completed and the red line put dow the citizens of the new state will be one of the happiest people up the Globe. No large State debt to pay; no oppressor's hand up them; the tree of liberty to shade them; the flag of the Union

cheer them, and the providence of God to bless. Who would not rejoice to dwell in such a state?"

[*Vol. 7. May 6, 1909.*] 734

MR. CLIFFORD E. SCOVILLE
resumed the stand for further direct examination.

By Mr. McClintic:

Q. Mr. Scoville, please tell the court about the two items for Gauley Bridge, charged one under the James River and the other a direct charge to Gauley Bridge in Defendant's Exhibit C-1, as to whether or no those were both James River expenditures or not, and whether or not the State got stock for it.

A. The first item is on page 4 of Plaintiff's Exhibit C-1. 735
under James River & Kanawha interests. The item reads "Gauley Bridge, $1,167.68." I have not been able to find where Mr. Potter obtained that figure, but I presume it came from the analysis of some account in the James River expenditures.

Mr. Mollohan: Did you find the date?

A. Mr. Potter gives a reference here—"J. R. Journal," meaning James River Journal, "B page 464," but that item does not show on page 464 as an item in itself.

Mr. Harrison: I will say to the witness, in explanation, that that reference was not intended to include Gauley Bridge. It applies to the items above Gauley Bridge, and you were misled by it. It is a typographical error.

The Witness: It is bracketed all the way down.

Mr. Harrison: Yes; it is bracketed all the way down, but the bracket ought to have stopped before it included the Gauley Bridge item.

The Witness: The second charge on account of the Gauley Bridge is on page 8 of the Plaintiff's Exhibit C-1, and amounts to $1,419.45. The third item extended into the total column from the bottom. That amount was extended under an act passed in 1837, and was paid to Joseph Blair and William Shields. The date of the act is March 6, 1837, page 291, and is for the balance due for construction of bridge over Gauley River. That is not a direct charge against West Virginia, but is an additional amount paid on account of James River improvements, for which the State received stock under an act passed in 1832.

Mr. Harrison: You mean it was a stock subscription and 736
not a direct expenditure?

The Witness: Yes, sir; practically that.

By the Special Master:

Q. The money was paid to these two men of whom you speak, who did the work on the bridge?

A. Yes, sir.

Q. But for the disbursement the State received stock?

A. Yes, sir.

Mr. Spooner: But was it a stock subscription?

A. Not primarily. It was a part of the James River improvements built by the State, but all of those improvements were turned over to the James River & Kanawha Company for stock in that company. So in that way it becomes a part of the cost of the stock which was received by the State.

By Mr. McClintic:

Q. Mr. Scoville, there was charged on page 13 the Northwestern Bank of Wheeling, $450,000. Please explain to the court—

The Special Master: Is that the same bank to which this certificate relates which you have just put in?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Please explain to the court how much of that sum of $450,000 was paid in money by the State.

A. Of the total stock, amounting in par value to $450,000, there was paid in cash by the State $425,091.33. The balance due on the State total subscription, amounting to $450,000, was paid by dividends on the stock which had been subscribed for by the State, which accrued before the subscription was fully paid for, and from those dividends, which amounted to exactly $33,000, there 737
was a deduction of an interest charge against the State, which left the net amount left them on dividends $24,908.67.

The Special Master: Which made up the balance of the $450,000?

The Witness: Yes, sir.

By Mr. McClintic:

Q. State to the court how many branches that bank had, if you know, and where they were situated?

A. The Northwestern Bank of Virginia was authorized to establish a great many branches that it never did establish. From reports which can be found in the documents of the House of Delegates of Virginia, we found that the following branches were actually established: One at Wellsburg, one at Parkersburg, and one at Jeffersonville, in Tazewell county, in the present State of Virginia.

Q. State next the sale of a part of the stock of the Northwestern Bank prior to January 1, 1861.

A. In the year 1857 the Commonwealth sold 1,082 shares of Northwestern Bank stock for $113,671.42, and turned the proceeds of that sale over to the Sinking Fund. That transaction is shown in the books of the Commonwealth—the original books.

Q. State what other stock, if any, the State of Virginia acquired in that Bank, and how?

A. We referred, first, to stock in that Northwestern Bank, amounting to a par value of $454,000. That is the total amount of stock which the State of Virginia purchased in that bank. $400,000 of that was purchased through what was known as the Commonwealth or General Fund, and $50,000 was purchased through the Literary Fund. 738

Q. Was there any bonus stock given to the State in that bank?

A. Yes, sir.

Mr. Conrad: I wish you would explain what you mean by bonus stock.

Mr. McClintic: It is a franchise stock. Both Mr. Potter and Mr. Dixey explained it.

Mr. Spooner: Do you mean payment for the franchise?

Mr. McClintic: Yes; the franchise tax you might say, as I understand it.

Mr. Conrad: Do you mean it was stock in addition to the entire stock of the corporation?

Mr. McClintic: The State exacted from the corporation so many shares of stock for nothing.

Mr. Conrad: Of its authorized capital stock, the State required that so much should be turned back to it for the stock.

The Special Master: That is, in addition to the stock subscribed and paid for?

Mr. McClintic: Yes, sir.

The Special Master: So that in a sense the State would have stock on its hands without having rendered any compensation therefor except as it was credited to the franchise and the price of the franchise of the bank.

By Mr. McClintic:

Q. How many shares of stock were there in this case?

A. There were 326 shares, of the par value of $100 each, amounting to $32,600. 739

By Mr. Conrad:

Q. Do you find it called bonus stock in any Act of Assembly?

A. Yes, sir; I am quite sure it was invariably referred to as bonus stock.

Q. In the Acts of Assembly?

A. Yes, sir; I am positive of that fact.

By Mr. McClintic:

Q. On page 2 of plaintiff's exhibit C-1, and on page 3 of defendant's exhibit C-1, is the Northwestern Turnpike Road. You made a thorough examination of those books yourself, I believe?

A. I did; yes, sir.

Q. Please explain the facts in relation to that charge, stating how much money was paid, how you arrived at it, and the tolls and other questions connected with it.

A. The Northwestern Turnpike Road was built entirely by the State, and separate construction books were kept of the expenditures. From those books we analyzed the various accounts of the expenditures, and applied as far as possible all expenditures which could be applied directly to either the present State of Virginia or West Virginia, and items which the books did not clearly record the localities on, we divided on a mileage basis, and on that plan we arrived at a charge against West Virginia of $573,994.39, and that amount includes tolls and I think small amounts of other income.

Q. What page of defendant's exhibit C-1 do you find that? 740

A. Page 3. It includes tolls and other income amounting to $173,670.39, the total amount of which went back into the road, was expended on the road.

Q. Have you given credit to West Virginia for her mileage proportion of those tolls?

A. Yes, sir.

Q. On exhibit F-1?

A. Yes, sir.

Q. Please look at page 4 of the same exhibit, C-1, of the defendant.

By Mr. Harrison:

Q. Before you do that, if it does not interrupt you, I would like to ask him a question, to explain it a little more fully. You have included in that charge tolls and other charges, you say?

A. Tolls and other income.

Q. I should have said other receipts, amounting to $173,000?

A. Yes, sir.

Q. Now, can you state without any special delay whether the corresponding exhibit filed by the plaintiff and prepared by Mr. Potter includes tolls and those other items of credit you speak of?

A. I cannot state, Mr. Harrison, but if I am not mistaken, it has

been testified by Mr. Potter that the tolls were not taken into account either way.

Q. He shows a charge against West Virginia under that item of $426,053, as against $573,994.39, and I simply wanted 741
to develop the fact that the difference is accounted for by the fact that Mr. Potter took no account of tolls and the other credits that have been included there.

A. That does account very largely for the difference. The difference between Mr. Potter's statement and our statement on that road is $153,920.22; but on our defendant's exhibit F-1, we take credit for $171,194.10 for a proportionate toll on a mileage basis, so that the difference after allowing for those tolls is $2,726.12.

Q. Eliminating the tolls, then, the only difference between yourself and Mr. Potter is some two thousand and odd dollars?

A. Yes, sir.

Q. Which you spoke of, which is classified under the head of other credits, or at least described by you among other credits.

By Mr. McClintic:

Q. In the $151,000 you included both the tolls and the other credits?

A. Oh, yes.

The Special Master: So that there is really a discrepancy of a little over $2,000?

Mr. McClintic: Yes.

The Special Master: That is one of the matters they will have to reconcile.

By Mr. Harrison:

Q. You say the tolls coming in from the operation of the road were extended along with any other operating fund for 742
the maintenance of the road?

A. And other purposes; expended on the road; yes, sir.

Mr. Harrison: That is all I want to ask.

The Special Master: I suppose they were expended for maintenance and operating expenses, were they not?

Mr. Harrison: I take it they were.

By the Special Master:

Q. Did I understand they were for new construction or simply operating and maintenance expenses? What is the fact about that, Mr. Scoville?

A. They were for both. In other words, I don't think it would be possible to say just how those tolls were applied, what was the exact application of that money; but it went back into the road,

and at the time it did go back, they were under construction expenses as well as operating expenses.

Q. At the time it went back, they were constructing the road then?

A. Yes, sir.

Q. They were constructing additional road?

A. Oh, yes; and they were also operating a part of it.

Mr. McClintic: The road was several hundred miles long, your Honor.

The Special Master: Yes; I did not know what the fact might be. I do not know that it is of any significance, anyway.

743

By Mr. Harrison:

Q. You say it would be impossible for you to tell for just what purposes the money derived as tolls was applied?

A. I don't think it would be possible.

By Mr. McClintic:

Q. On page 4, the Staunton & Parkersburg Road. Please explain in a general way about that. That is defendant's exhibit C-1, page 4.

A. The Staunton & Parkersburg Road was also built wholly by the State, and construction books were kept, in which the expenses on account of that road were recorded and the accounts appearing in those books were closely and carefully analyzed and treated exactly the same as the Northwestern Turnpike accounts were treated.

The Special Master: The Northwestern Turnpike Road was also built wholly by the State?

A. Yes, sir.

By Mr. McClintic:

Q. Have you there, Mr. Scoville, plaintiff's exhibit D-1?

A. Yes, sir.

Mr. Harrison: I would like to ask Mr. Scoville a question. Right there, if Mr. McClintic will allow me?

Mr. McClintic: Certainly.

By Mr. Harrison:

Q. You show as a charge against West Virginia under the Staunton & Parkersburg Road item, $288,807.56, do you not?

A. Yes, sir. 743½

Q. Turning to the plaintiff's corresponding exhibit dealing with that item, on page 3, plaintiff's exhibit C-1, the amount charged against West Virginia is shown to be $284,232.64?

A. Yes, sir.

Q. Or within about $4,000 of the amount shown by you?

A. Yes, sir; but in connection with that Staunton & Parkersburg charge on our exhibit, we also take credit on our exhibit F-1, which covers receipts for $18,952.90 for West Virginia's proportion of tolls on a mileage basis; so that after applying that, it makes the difference considerably larger.

By the Special Master:

Q. It makes your sum smaller instead of larger?

A. Yes, sir.

Q. That is, if you struck a balance?

A. Yes, sir.

By Mr. Harrison:

Q. Taking a credit for tolls?

A. Yes, sir.

Q. Were the tolls handled in that case as they were in the Northwestern Turnpike Company case?

A. Just exactly the same.

The Special Master: The money went on to the road for its maintenance and operation and construction?

A. Yes, sir.

Mr. Spooner: It was self-supporting to that extent.

836

[*Vol. 7. July 1, 1909. Plaintiff's Revised Exhibit C-1.*]

[The Special Master]:

The next is Paragraph 3 (reading from the decree):

"All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

Mr. Anderson: I now submit this exhibit, marked C-1.

(The exhibit referred to was filed with the stenographer, and marked "Plaintiff's Revised Exhibit C-1.)

Mr. Harrison: We submit what we call Plaintiff's Revised Exhibit C-1.

The Special Master: I am not at all particular about the language, but I think we had better have consistent language throughout. I am willing to call them all revised schedules or substitute

schedules. My own notion was that we might substitute these for the others, but if you prefer the other method, Brother 837
Harrison, very well.

Mr. Harrison: No, not at all—

The Special Master: The Plaintiffs submit Plaintiff's Substitute Schedule C-1. I will say that of course when we come to make up this record there will not be any occasion for showing that several schedules in reference to the same subject have been submitted. There is no occasion for the record disclosing how we reach the agreement, where we do agree. This is the Plaintiff's Substitute Schedule C-1. Now, am I to understand that the computations appearing on that schedule as to amount are agreed to by Virginia and West Virginia?

Mr. McClintic: I understand not.

Mr. Carlisle: There is a statement there which shows, I think—

Mr. Harrison: Substitute Schedule C-1 that you hold in your hand shows in complete detail the points of disagreement, both as to amounts and as to classification.

Mr. Carlisle: And as to everything else except what is enumerated as disagreement, there is an agreement.

Mr. Harrison: I would not make it as broad as that.

The Special Master: Let us make it just as it is. We will not have anything the result of inadvertence or misunderstanding if we can help it.

Mr. Dixey: There are some adjustments yet that have not been entirely agreed to. There are some differences in figures that appear when we go to check up the statements. I think the differences can be reconciled, but as I understand it, they are not yet all reconciled. 838

The Special Master: Then, why do we not have these reconciled before we agree on it? If it is probable that the experts on both sides will later, at some time, be able to submit to us a complete schedule of agreement under this paragraph, would it not seem to you, Mr. Carlisle, that we had better suspend this until then?

Mr. Carlisle: Yes, sir.

The Special Master: How does that strike you, Brother Anderson?

Mr. Anderson: Our information was that there was an agreement as to amounts. Of course there is not an agreement as to the classification—

Mr. Dixey: I think it could be adjusted in a few hours.

The Special Master: Very well. Then, suppose we suspend on this for the present in the hope that the experts may be able to agree on the items?

Mr. Harrison: We were not aware of any disagreement ourselves.

The Special Master: Well, I will ask Mr. Dixey and Mr. Potter to

get together at the intermission and see if they can reconcile that, and if they cannot during that time, we will see if further time will be needed.

The Special Master: We now come to Plaintiff's Revised 874
Exhibit C-1.

Mr. Harrison: That is suspended. That is still open.

The Special Master: You have not any evidence, so far as 875
you know, if the experts agree on the figures, that you wish to put in; you have not any additional evidence?

Mr. Harrison: No, sir.

965

[*Vol. 7. July 2, 1909. Plaintiff's Substitute Exhibit C-1.*]

Mr. Anderson: C-1 we had better put in first, I reckon. That has been modified somewhat. We wish to substitute this for the one filed. We will withdraw the other and put this in (indicating).

Mr. McClintic: We do not want any withdrawals.

The Special Master: No; they are all in. Plaintiff's Substitute C-2. Am I correct in my understanding that all the computations that appear on this schedule are agreed to as being correct in amount (referring to Substitute Exhibit C-1).

Mr. Dixey: Not all the computations, because that includes 966
certain amounts which the plaintiffs charged to West Virginia.

The Special Master: What I want to know is this: whether the items are correctly stated as to amounts.

Mr. Dixey: As to the totals, yes; not that proportion chargeable to West Virginia.

Mr. Carlisle: You agree upon the aggregates, but you do not agree upon the proportions.

Mr. Dixey: That is it.

The Special Master: What are the items as to which you disagree about the proportions?

Mr. Dixey: There are a great number. They are all in this schedule and marked here (indicating).

Mr. Anderson: What schedules?

Mr. Dixey: This is C. All the items that are marked in this last column, defendant's Exhibit G-1, and there are a great number of them; there are 138 items on the schedule. I believe we agree as to this amount in the total column. There is no agreement as to the amounts in the right hand column marked "amounts chargeable to West Virginia."

Mr. Harrison: You do agree upon the percentage?

Mr. Dixey: On the percentage of the property in West Virginia; not the percentage as a charge.

Mr. Anderson: You object to the classification.

Mr. Dixey: We do not agree about that at all, as to amounts, because we have not verified it.

The Special Master: This is under Paragraph 3, page 4. 967
Let me take one item. Here is the total, under the No. 1, Abbs Valley and Tug Road. This schedule shows the part of the improvement in West Virginia to be 90.1 per cent. Now, what I want to know is whether that percentage is agreed upon.

Mr. Dixey: We agree to that item in its entirety, because that is on our Exhibit C-1. It is only those that are on our Exhibit G that we do not agree to.

The Special Master: The third item, Berkeley & Hampshire turnpike, part of improvement in West Virginia, 42.96 per cent. Is that percentage agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: The total there is $16,572. Is that agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: Then comes the amount chargeable to West Virginia, $15,322.47. Is that agreed upon?

Mr Dixey: No, sir. We do not agree on that.

Mr. Harrison: In what respect do you not agree?

Mr. Dixey: We do not agree that there is a charge there of any amount. That still has to be determined.

Mr. Harrison: That is not for the accountants to determine.

The Special Master: Let me find out right here where we are. Your contention is that it is not chargeable at all, but if chargeable, would it not be 92.46 per cent. of that amount?

Mr. Dixey: I don't know; it depends on what basis the charge is made upon. Is is true that 92.46 per cent. of that 968
property in mileage lies in West Virginia; but whether that would be a proper charge or not I would not say.

The Special Master: That is for me to say.

Mr. McClintic: And if you charge to us that sum, what is the stock worth; that is the question for you to decide.

The Special Master: You must all bear in mind that when I come to pass upon this I shall pass upon it as it appears in the record. When I take this item here to illustrate, the total, $16,572, you agree upon that, and then it is said that that percentage of that item is in West Virginia. Well, if I charge it on the basis of percentage, I will charge West Virginia with $15,322. I do not say now, of course, what I would do. But I understand that you agree on those figures. But you do not agree that it is chargeable on that basis.

Mr. Dixey: We agree that that percentage of the physical mileage is in West Virginia.

The Special Master: Then the question comes up whether that is a proper way to estimate that charge.

Mr. Carlisle: In the bill of Virginia against West Virginia and in this case there is a charge that West Virginia received from the State of Virginia under the Acts of 1863 certain stocks, and a claim is made for stocks that are worth millions of dollars. They also claim in that bill that West Virginia is chargeable for all the money that was expended in paying for those stocks.

The Special Master: I understand your position is that that is a duplicate charge?

Mr. McClintic: And your Honor has to decide under which 969
one of these charges these things have to be met. The accountants cannot settle that question.

Mr. Harrison: That is what I said.

Mr. Anderson: We do not propose to anticipate the argument, but my friend entirely misstates the fact about it.

The Special Master: But you are not embarrassed by that; that will not affect you at all.

Mr. Carlisle: I did not make any argument; I just stated the situation.

The Special Master: I am glad to have counsel make any suggestions; but there is not a single thing that counsel states, a single suggestion, that will have the slighest weight with me in reaching my conclusions. I am going to wait for the argument before I begin to make up my mind at all. Of course, I do not mean to say that I do not like to have suggestions from counsel; but anything that is said now will not influence me one way or the other in making up my mind.

Mr. Anderson: I want to say that they either have to stand on the Wheeling ordinance, or not stand on it.

Mr. Carlisle: So do you.

The Special Master: You are both either on or off.

Mr. Anderson: Under the Wheeling ordinance West Virginia is to be charged with all the expenses made in the territory constituting the new State.

The Special Master: The only thing I am interested in now is this. In the first place, to get this schedule so I will know what it
means. There are some of these items as to which Mr. Potter 970
claimed a certain sum was expended in West Virginia on the basis of a certain mileage, and Mr. Dixey claimed another sum on the basis of another mileage. If they have reconciled the thing so that they agree on their mileage and total amounts, and agree on the percentage that would follow, that is all I want to know.

Mr. Harrison: That is true.

The Special Master: Now, what weight I will give to that is a other question.

Mr. McClintic: It is a small matter, but referring to item 16 the next page—

The Special Master: Just a moment. Do you get the significan of my suggestion?

Mr. Carlisle: Certainly.

Mr. McClintic: We do not agree to that seventeen per cent. ther in item 16, Mountain Lake and Sulphur Springs turnpike.

The Special Master: Let me make inquiry right now. Here a under the first heading 22 items. Am I correct in my understandi that the amounts stated in the column under the heading, "Part improvements in West Virginia," are agreed upon by both sides being accurately stated?

Mr. McClintic: Except item 16.

The Special Master: Except item 16. Am I correct in understan ing that in Plaintiff's Revised Exhibit C-1, or substitute Exhibit C on pages 4, 5 and 6, including 22 items, that the parties are in agre ment on all of the sums appearing in the column, "part of improv ment in West Virginia," except item No. 16. Do I state that correctly? Mark that down in the record. 97

Mr. Potter: Do you want to summarize the first division of this? If you do, on page 8 is the total.

The Special Master: I guess I am right where I want to be. will get your suggestions as I go along. I am going to clean th schedule up in its logical order, and when we agree to anything w will settle that. Am I stating that right?

Mr. McClintic: As I understand it you agree on column 1—

Mr. Anderson: I haven't got it before me.

The Special Master: Just answer my questions. Do the parti agree on all the claims mentioned in the column headed, "Part improvement in West Virginia," except as to item 16?

Mr. McClintic: I think so.

Mr. Harrison: Let us see what the disagreement is about that.

The Special Master: I will attend to that. You cannot make a progress unless you proceed logically.

Mr. McClintic: Now, take the next claim.

Mr. Harrison: 16, you say, is not agreed on?

The Special Master: One moment. Do the parties agree on t sum stated in the column marked "Part of the improvement in We Virginia," with the exception of item 16?

Mr. McClintic: I understand so, yes.

The Special Master: Very well. Mark that down, that the parties do so agree. 97

Mr. Conley: We are not agreeing that we owe it.

The Special Master: No, that is not implied at all.

Mr. Conley: But the record does not show that.

The Special Master: Have the record show that the Master inquires whether they agree on the amounts stated.

Mr. Conley: How easy it would be for the Court, not understanding what is going on here, to understand from the record that we agree that that is a proper charge.

The Special Master: Well, let me state it in the record again, that there is no agreement that has yet been made, or intended to be made, that will be intended to bind or will bind—and this is the fourth or fifth time I have stated this—either party as to their classification or as to whether they are or are not a proper subject of credit. The agreement only goes so far as to fix the amount. A record might be so construed that there would be some misunderstanding, and you are perfectly right, Mr. Attorney General, to have it distinctly understood that no agreement that has been made or that will be made in connection with any of these items in any of these schedules binds either party as to their classification, or as to whether they are or are not a proper subject of credit. That will be distinctly understood, and I think is now clear upon the record.

Mr. Conley: You stated that broadly on yesterday; that was my understanding also, but I wanted it to appear so clearly on the record that there would not possibly be any doubt about it.

Mr. Anderson: That was stated a half a dozen times.

The Special Master: Well, it does not hurt to have it stated 973 again. Now, as to item 16.

Mr. McClintic: I took the deposition of a witness on that question, and we claim it should be 16-2/3 per cent. instead of 17.39 per cent.

Mr. Harrison: Do you not agree, Mr. Dixey, with Mr. Potter on that?

Mr. Dixey: No, sir.

The Special Master: It is either 17.39 or—what is the other figure?

Mr. McClintic: It is either 17.39 or 16-2/3 per cent.

The Special Master: There is a difference, then, of about one per cent. Do you want to waste any time on that?

Mr. Anderson: No.

Mr. McClintic: It is merely a matter of proof by my witness. I can prove that by my witness.

The Special Master: Well, shall I put in 16-2/3 instead of 17.39?

Mr. Harrison: We have been acceding and conceding—

The Special Master: You do not have to accede to anything. The question is, will Virginia agree to that being 16-2/3?

Mr. Anderson: Yes, sir; we will.

The Special Master: Let that go into the record that way, then.

Mr. Anderson: That would be less than $48.

The Special Master: On page 6 I notice, "Revised figures, 9
June 30, 1909, construction charged to West Virginia, page 5.
$465,732.11," and other pages there, there being six totals in all.

Mr. Dixey: That all relates back, if you will look at the preceding
page, to the Northwestern turnpike.

The Special Master: The computations are agreed to, are they?

Mr. Dixey: As I understand it, they are, yes, sir.

The Special Master: Now, take up page 7. Do those summari
also result from the previous computations?

Mr. Dixey: Yes, sir.

The Special Master: Then they are agreed to. Now, let us tal
up page 8.

Mr. Harrison: That is part of what you have already been co
sidering.

The Special Master: Page 8 is?

Mr. Harrison: Yes.

The Special Master: Some of the items already considered?

Mr. Harrison: No, that is a continuation.

The Special Master: Very well. Let me take those. Beginnir
on page 8, and running to 15—

Mr. McClintic: Page 8 ends the first division.

The Special Master: Oh, yes. Now, page 8, those are the figure
the computations, appearing in the three columns, "Part of in
provement in West Virginia," the total, and "Amount chargeab
to West Virginia;" and the amounts agreed upon as correctly state

Mr. Anderson: There is a change in the total, but that is
made in another place. 9

The Special Master: Where there is an error in computation, that can be fixed. Are those amounts agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: They are agreed upon, and let it be
marked in the record. Now, beginning at page 9 and running
page 15, the amounts of various items that appear on those page
are the amounts of the various items as appearing on those pag
agreed to?

Mr. Dixey: 8 to 15, inclusive, all with the exception of the la
item, marked 112 Trans-Alleghany Lunatic Asylum, are agreed t

The Special Master: Where is the item?

Mr. Dixey: 112, the last item, Trans-Alleghany Lunatic Asylu

The Special Master: We can take care of that. All of the iter
on page 9 to page 15, under the column of "Amount chargeable
West Virginia," it is agreed that the amounts are correctly state

the parties still agree. Now, as to 112, Trans-Alleghany Lunatic Asylum, $125,000, is it or not agreed that that is the correct amount, without respect to whether it is chargeable or not?

Mr. Carlisle: There is $27,000 difference there.

The Special Master: There is $27,000 difference there. What gives rise to that difference?

Mr. Dixey: The $27,000 that was returned from the Lunatic Asylum to the State.

The Special Master: Am I to understand that you agree 976
that in the first instance there was $125,000 appropriated for that purpose?

Mr. Dixey: Yes, sir.

The Special Master: And was it turned over to the Lunatic Asylum Fund?

Mr. Dixey: Yes, sir.

The Special Master: Then afterwards, your contention is that that was returned to the State?

Mr. Dixey: Yes, sir.

The Special Master: And therefore the $125,000 should be stated as minus $27,000?

Mr. Dixey: Yes, sir.

The Special Master: What do you say to that, Mr. Attorney General?

Mr. Anderson: Our friends are mistaken as to the facts. The facts are these. The $27,000 was paid to the Northwestern Lunatic Asylum and turned over to the Board of Directors. A military raid was made from Wheeling and that was taken from the Northwestern Lunatic Asylum. They were afraid the Confederates would get hold of it, and so that money was taken to Wheeling, and every dollar of it was expended on the Northwestern Lunatic Asylum in West Virginia.

The Special Master: What do you say to that, Brother McClintic?

Mr. McClintic: That is absolutely wrong. The money was paid into the treasury in the summer of 1861 and spent by the restored Government of Virginia for the purposes of government, spent by Virginia, by the State of Virginia.

The Special Master: Is not this the item as to which you produced some books here at the last hearing showing the $27,000 accounted for in some way? 977

Mr. McClintic: Yes.

The Special Master: Well, is there anybody that can supplement that in any way?

Mr. Harrison: Yes, sir. The books show that that money was put back into the treasury of the Lunatic Asylum.

The Special Master: If that is so, the books will show it. Have you any evidence in addition to the books, Brother McClintic?

Mr. McClintic: No, sir.

The Special Master: Have you any evidence, any testimony, Brother Harrison, that you can submit to me, in addition to the books already in?

Mr. Harrison: That book is in.

The Special Master: Well, have either of you anything supplemental to that?

Mr. Harrison: No, sir.

Mr. McClintic: No, sir.

The Special Master: Then there is no reason why these two experts cannot say to me what the books show. You stated $125,000 on the assumption that all went in, and they undertake to account for it in this way. Now, what I want these experts to do is to get together and show me what the books show as to this item. If they cannot get together, I will get an expert of my own to dig it out. It is not worth while to discuss that any longer. Now, what about this last, this page 16, Literary Fund Disbursements?

Mr. McClintic: That is a schedule of a total that is already 978 in.

The Special Master: Are those amounts correctly stated? I understand that that is agreed upon.

Mr. McClintic: Yes, sir.

[*Vol. 7. July 2, 1909. Relating to Winchester and Potomac R. R.*]

The Special Master: Defendant's Revised Exhibit C-1.

Mr. Carlisle: This is page 8, left-hand column. I will simply state we do not agree to that, of course. It is not part of the account. The item of the Winchester & Potomac Railroad, I have item No. 25. Mr. Potter has inserted this on his account:

"Excluded by defendants because it is stated that the loan of $150,000"—

The Special Master: Excuse me; the statement that Mr. Potter makes as to the reasons as given by the defendant is all well enough from his point of view, but it does not foreclose the defendant.

Mr. Carlisle: Here is another statement (reading):

"The Second Auditor pursued a course in dealing with these two items on his book not contemplated in the act authorizing the annuity, the result of which made it appear that the State had surrendered $270,000 for $83,333.33. The State intended to post-

pone the collection of the loan of $150,000 while and only so 998
long as the annuity was promptly paid by the company, and no reference is made in the act as to the disposition of the stock amounting to $120,000."

The Special Master: As to those items, I shall reach a conclusion that is predicated on the evidence in the case. Mr. Potter's conclusion will not have the slightest effect on the Master at all. There is no particular harm in his stating what his contention is, and whether Mr. Potter's conclusions are correct or not depends on what the acts of the Legislature and the record evidence in this case shows; and while the Master has not any objection to the suggestion of Mr. Potter, it will weigh nothing with the Master in reaching his conclusions. I will hear you all on that before I make my finding.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT D-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT D-1.

Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said Debt was Contracted as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Average Total Population of Virginia With and Without Slaves, as shown by the Census of the United States.

PARAGRAPH IV OF DECREE.

Ordinary Expenses of the Government from March 19th, 1823, to December 31st, 1860, Inclusive.

Plaintiff	$37,794,211.18
Defendant	18,207,684.29
Difference	$19,586,526.89

This difference is composed of the following items, all of which are agreed to by the parties to be correct as to amount, but nothing contained herein shall be construed as an admission as to the propriety of including or excluding any disputed items:

No.				
1	Tobacco Receipts (1)			$ 353,123.96
2	Constitutional Conventions			258,906.28
3	Slaves transported and executed			311,168.35
4	Boundary Lines			16,704.78
5	Maps (Commonwealth)	$16,628.04		
	Maps (Board of Public Works)	11,446.48		
				28,074.
6	Deaf, Dumb and Blind Institution 1845-1860, New Buildings, etc. (See pages 5-7 for details)			80,661
7	International Exchanges			2,836
8	Overpayment of Treasury Notes			50.00
9	Printing Treasury Notes			375.74
10	Loss account of Counterfeit Money			190.00
11	Virginia Military Institute, New Buildings, etc. (See pages 8-9 for details)			151,000.00
12	University of Virginia, Repairs and Improvements to Buildings and Water Supply (See page 10 for details)			25,000.00
13	Improvements, Public Square (See page 11 for details)			1,456.91
	Improvements, Capitol Square (See page 12 for details)			12,278.47
14	Fugitive Slave Expense	$ 701.00		
	Reward, Additional	1,500.00		
				2,201.00
	Carried forward			$ 1,244,028.14

(1) Deducted from ordinary expenses by defendant.

	Brought forward		$ 1,244,028.14
No. 15	Penitentiary Lot, New Hospital Building, etc. (See page 13 for details)		13,947.48
16	Calling out Militia at Wheeling in 1836		1,099.00
17	Medical College of Virginia, Additions and Improvements to Buildings, etc. (See page 14 for details)		25,000.00
18	Attorney General's Fees, prosecuting Selden, Withers & Company		500.00
19	Eastern and Western Asylums (See pages 15-22 for details):		
	New Buildings, etc.	$336,845.56	
	Support	7,450.01	
			344,295.57
20	Gun House at Alexandria		900.00
21	Cannon House, Surry County		110.00
22	Gun House for Richmond Artillery		1,079.09
23	Sundry B. P. W. Expenses		36,728.50
24	Interest:		
	Interest on Public Debt	$18,324,044.50	
	Interest on Treasury Notes	133,527.34	
	Interest on Temporary Loans	107,844.57	
	Interest on Old Military Debt of 1814 and prior	9,331.43	
			18,574,747.84
			$20,242,435.62
	Less—Amount of payments to School Commissioners admitted by Defendant in Exhibit D-1, under Paragraph IV for		655,908.73
	But charged by Plaintiff as $830,865.37 (being payments into West Virginia Counties) in Exhibit C-1, under Paragraph III.		
	Net Difference		$19,586,526.89

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

THE DIVISION OF THE ORDINARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CAUSE

PLAINTIFF:

"The Average Total Population" *including slaves* is construed to mean the average for each decade determined by averaging the census at the beginning and a found determines the proportion in which the Total Ordinary Expense for that decade is to be charged to the two States. (See page 3 for details.)

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	996,340	85.9789%
1830 and 1840	"	1,024,871	83.6218%
1840 and 1850	"	1,067,304	80.2045%
1850 and 1860	"	1,169,489	77.5014%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,469,250.90	83.6218%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,978,147.55	80.2045%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	15,796,066.53	77.5014%
Total		$37,794,211.18		$30,138,816.38	

"The Average Total Population" *excluding slaves* is treated in the same manner as above, producing the following:

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	559,399	79.3334%
1830 and 1840	"	583,579	76.1625%
1840 and 1850	"	626,041	71.9611%
1850 and 1860	"	707,228	68.8438%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,671,563.26	79.3334%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,070,581.13	76.1625%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,260,935.16	71.9611%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	14,031,504.53	68.8438%
Total		$37,794,211.18		$27,034,584.08	

Total charge to West Virginia on basis of Average Total Population *including slaves* .....

Total charge to West Virginia on basis of Average Total Population *excluding slaves* .....

Certified correct
ARTHU

Defendant agrees that the above calculations are correctly made but objects both to the method adopted and to the division so arrived at as well as the amount t

Certified Co
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ARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CAUSE AS FOLLOWS:

the average for each decade determined by averaging the census at the beginning and at the end of that decade. The average total population so se for that decade is to be charged to the two States. (See page 3 for details.)

ted)	Virginia.....	996,340	85.9789%	West Virginia	162,479	14.0211%
	"	1,024,871	83.6218%	" "	200,731	16.3782%
	"	1,067,304	80.2045%	" "	263,425	19.7955%
	"	1,169,489	77.5014%	" "	339,501	22.4986%

percentages:					
.....$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%	West Virginia,	$ 472,162.49	14.0211%
..... 5,344,600.21	Virginia,	4,469,250.90	83.6218%	West Virginia,	875,349.31	16.3782%
..... 8,700,443.93	Virginia,	6,978,147.55	80.2045%	West Virginia,	1,722,296.38	19.7955%
..... 20,381,653.15	Virginia,	15,796,066.53	77.5014%	West Virginia,	4,585,586.62	22.4986%
.....$37,794,211.18		$30,138,816.38			$ 7,655,394.80	

manner as above, producing the following:

ated)	Virginia..	559,399	79.3334%	West Virginia, ...	145,725	20.6666%
	"	583,579	76.1625%	" "	182,650	23.8375%
	"	626,041	71.9611%	" "	243,931	28.0389%
	"	707,228	68.8438%	" "	320,065	31.1562%

percentages:					
.....$ 3,367,513.89	Virginia,	$ 2,671,563.26	79.3334%	West Virginia,	$ 695,950.63	20.6666%
..... 5,344,600.21	Virginia,	4,070,581.13	76.1625%	West Virginia,	1,274,019.08	23.8375%
..... 8,700,443.93	Virginia,	6,260,935.16	71.9611%	West Virginia,	2,439,508.77	28 0389%
..... 20,381,653.15	Virginia,	14,031,504.53	68.8438%	West Virginia,	6,350,148.62	31.1562%
.....$37,794,211.18		$27,034,584.08			$10,759,627.10	

on basis of Average Total Population *including slaves* .....$ 7,655,394.80

on basis of Average Total Population *excluding slaves* $10,759,627.10

Certified correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

cts both to the method adopted and to the division so arrived at as well as the amount to be divided.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXON,
For the Defendant.

PLAINTIFF'S METHOD OF ARRIVING AT PERCENTAGES TO DIVIDE ORDINARY EXPENSES OF GOVERNMENT.

TOTAL POPULATION INCLUDING SLAVES.

	Virginia.		*West Virginia.*	
1820	928,558		136,808	
1830	1,034,481		176,924	
10 years' Increase	105,923		40,116	
1022/3652 of Increase	29,642		11,226	
Add—1820	928,558		136,808	
1823	958,200		148,034	
1830	1,034,481		176,924	
	2)1,992,681		2)324,958	
	996,340	85.9789%	162,479	14.0211%
1830	1,034,481		176,924	
1840	1,015,260		224,537	
	2)2,049,741		2)401,461	
	1,024,871	83.6218%	200,731	16.3782%
1840	1,015,260		224,537	
1850	1,119,348		302,313	
	2)2,134,608		2)526,850	
	1,067,304	80.2045%	263,425	19.7955%
1850	1,119,348		302,313	
1860	1,219,630		376,688	
	2)2,338,978		2)679,001	
	1,169,489	77.5014%	339,501	22.4986%

TOTAL POPULATION EXCLUDING SLAVES.

	Virginia.		*West Virginia.*	
1820	518,529		121,689	
1830	582,397		159,251	
10 years' Increase	63,868		37,562	
1022/3652 of Increase	17,873		10,511	
Add—1820	518,529		121,689	
1823	536,402		132,200	
1830	582,397		159,251	
	2)1,118,799		2)291,451	
	559,399	79.3334%	145,725	20.6666%
1830	582,397		159,251	
1840	584,761		206,049	
	2)1,167,158		2)365,300	
	583,579	76.1625%	182,650	23.8375%
1840	584,761		206,049	
1850	667,320		281,813	
	2)1,252,081		2)487,862	
	626,041	71.9611%	243,931	28.0389%
1850	667,320		281,813	
1860	747,136		358,317	
	2)1,414,456		2)640,130	
	707,228	68.8438%	320,065	31.1562%

"The Average Total Population of Virginia, with and without Slaves, as shown by the census of the United States" is construed to mean the average of the five censuses from 1820 to 1860 both inclusive; and the proportion of the total ordinary expenses of Virginia for the period from March 19th, 1823, to December 31st, 1860, chargeable to West Virginia on the above basis, is determined by dividing the said total Ordinary Expenses on the ratio which the average total population of Virginia with and without slaves bears to the average total population with and without slaves of those counties which were created into the State of West Virginia:

Virginia:						
Census of 1820	Population with Slaves	928,558		Population without Slaves	518,529	
" " 1830		1,034,481			582,397	
" " 1840		1,015,260			584,761	
" " 1850		1,119,348			667,320	
" " 1860		1,219,630			747,136	
Total 5 censuses		5,317,277			3,100,143	
Average 5 censuses		1,063,455	81.3718%		620,029	73 3369%
West Virginia:						
Census of 1820	Population with Slaves	136,808		Population without Slaves	121,689	
" " 1830		176,924			159,251	
" " 1840		224,537			206,049	
" " 1850		302,313			281,813	
" " 1860		376,688			358,317	
Total 5 censuses		1,217,270			1,127,119	
Average 5 censuses		243,454	18.6282%		225,424	26.6631%

The proportion of the Ordinary Expenses of the government of Virginia assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia as shown by the census of the United States:

With Slaves.....18.6282% of $18,207,684.29 = $3,391,763.84

Without Slaves.....26.6631% of $18,207,684.29 = $4,854,733.07

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above calculations are correctly made, but objects both to the method adopted, and the division so arrived at, as well as the amount to be divided.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

No. 6.

DEAF, DUMB AND BLIND INSTITUTE.

This Institute was established under an Act of March 31st, 1838, page 32, Chapter 19, authorizing an appropriation out of the revenue of the Literary Fund, for an amount not exceeding $20,000, for purpose of procuring a site or sites and erecting necessary buildings, etc.

Payments were made as follows:

Year	1839	$10,000.00	
"	1841	5,000.00	
"	1842	2,500.00	
"	1843	2,500.00	
			$20,000.00

An Act of March 20th, 1841, page 37, Chapter 14, authorized the payment of $6,250 for purchase of furniture, musical instruments, books, etc., apparatus, and other articles, required for the outfit of the Institution. Payment was made in 1841 in two amounts—viz: $1,562.50 and $4,687.50. Total..... 6,250.00

An Act of January 23rd, 1845, page 13, Chapter 9, authorized an appropriation of $25,000 for completion of the buildings of the Institution, provided that the aforesaid appropriation should be so expended as to fully complete the said buildings in such mode and style as such appropriations would warrant.

Payments were made as follows:

Year	1845	$ 4,166.66	
"	1846	4,166.66	
"	1846	4,166.66	
"	1847	4,166.66	
"	1847	4,166.66	
"	1848	488.66	
			21,321.96

An Act of March 20th, 1847, page 230, Chapter 272, authorized a payment of $5,998.98 to William C. Adams, or his legal representative, being an allowance on account of work done, materials furnished, etc., in erection of buildings.

Payment was made in 1847..... 5,998.98

An Act of February 24th, 1846, page 20, Chapter 18, authorized a payment of $5,000 for necessary furniture and fixtures.

Payments were made as follows:

Year	1846	$ 2,500.00	
"	1847	2,500.00	
			5,000.00

Carried forward $53,570.94

D-1
Page 6

Brought forward		$58,570.94
An Act of March 16th, 1847, page 16, Chapter 15, provided among other things for the following—viz: $2,000 for the purchase of 20 acres of land adjoining and lying south of the present Institution lot; $1,000 for the purchase of raised and common types, moulds, and other printing apparatus as may be required; $2,300 for the purchase of materials, machines and tools for the various workshops of said Institution, and for the completion of said workshops. Payments were made in 1848		5,300.00
An Act of January 25th, 1849, page 14, Chapter 12, authorized payment of an amount not to exceed $4,000 for the erection of a plain, substantial brick building of sufficient size to contain a laundry and bakehouse, and accommodations for servants. Payment was made in 1849		4,000.00
An Act of March 7th, 1851, page 5, Chapter 2, authorthorized payment of $2,500 for completing the buildings of the Institution. Payment was made in 1851		2,500.00
An Act of March 14th, 1850, page 4, Chapter 1, authorized payment of $6,000 for furniture for increased number of pupils in the Institution under Act of March 16th, 1847, and for arrears in support of Institution. Payment was made in 1850.....		6,000.00
An Act of June 5th, 1852, page 29, Chapter 35, authorized the payment of $2,000 for purchase of a library, philosophical apparatus and an organ.		
Payments were made as follows:		
Year 1852	$ 1,000.00	
" 1853	1,000.00	
		2,000.00
An Act of February 24, 1853, page 126, Chapter 145, authorized the following payments: $7,000 for construction of fixtures for warming buildings; $5,000 for construction of apparatus for lighting buildings with gas; $8,000 for the erection of an additional building.		
Payments were made as follows:		
Year 1853	$ 5,000.00	
" 1853	2,500.00	
" 1854	10,000.00	
" 1855	2,500.00	
		20,000.00
An Act of March 4th, 1854, page 30, Chapter 41, authorized payment of $10,000 for permanent water supply. Payment was made in 1854.....		10,000.00
Carried forward		$108,370.94

Brought forward		$108,370.94
An Act of March 13th, 1856, page 80, Chapter 93, authorized the following payments: $3,000 for additional boiler, and erection of suitable boiler house to complete the heating of the buildings by steam; $1,000.00 for purchase of fire engine and erection of engine house; $1,500 for purchase of an organ, in addition to amount appropriated by former Act; $1,000 for fencing grounds, and $2,841 for deficiency of Chapel Steam and Gas Fund.		
Payments were made as follows:		
Year 1856	$ 8,341.00	
" 1857	1,000.00	
		9,341.00
An Act of January 10th, 1860, page 106, Chapter 12, authorized an appropriation of $7,000 for the erection of a shop building and to warm and light same with steam and gas. Payment was made in 1860.....		7,000.00
		$124,711.94
Less		
Amounts included by defendant in ordinary expenses of government:		
Under Act of March 20th, 1841.....	$ 6,250.00	
do Feb. 24th, 1846	5,000.00	
do March 16th, 1847	3,300.00	
do March 14th, 1850	6,000.00	
do June 5th, 1852	2,000.00	
do March 13th, 1856 (purchase of organ), ...	1,500.00	
	$24,050.00	
Original buildings under Act of March 31st, 1838....	20,000.00	
		44,050.00
Net amount plaintiff claims as an addition to defendant's ordinary expenses on this account		$ 80,661.94

No. 11.

VIRGINIA MILITARY INSTITUTE.

This Institute was established under an Act of March 29th, 1839, entitled:

"An Act amending and reducing into one the several Acts concerning the reorganization of the Lexington Arsenal and the establishment therewith of a Military School at Washington College."

An Act of March 6th, 1840, page 26, Chapter 15, authorized an appropriation of $4,500 for the erection of a steward's house and for furnishing a supply of water for the Institute, to be paid as follows: $1,500 in the year 1840, $1,500 in 1841 and $1,500 in 1842. Payments were made accordingly ..... $ 4,500.00

An Act of February 14th, 1844, page 22, Chapter 27, authorized appropriation of an amount not exceeding $1,000 for the erection of a magazine and shelter for artillery at the Institute. Payment was made in 1845 ..... 1,000.00

An Act of March 7th, 1848, page 18, Chapter 17, authorized an appropriation of $4,500 for erecting a house for an additional Professor; also a hospital, at the Institute. Payment was made in 1848..... 4,500.00

An Act of March 8th, 1850, page 16, Chapter 19, authorized an appropriation of $46,000—viz: $11,500 a year for four years, for construction of suitable buildings for cadets' quarters, and for other purposes, as specified in the report of the Board of Visitors of September 15th, 1849.

Payments were made as follows:

Year 1850	$11,500.00	
" 1851	29,500.00	
		41,000.00

An Act of June 5th, 1852, page 21, Chapter 20, appropriating the public revenue for fiscal year 1851-1852 authorizes payment of the balance of $5,000 for erection of new barracks, etc., under Act of March 8th, 1850 (above). Payment was made in 1852..... 5,000.00

An Act of May 29th, 1852, page 29, Chapter 34, makes provision for additional accommodation for the cadets of the Institute, the new barracks erected under Act of March 8th, 1850, being insufficient to accommodate the additional cadets. This Act also mentions that an addition of funds is needed for the purpose of improved heating and lighting arrangements. An amount of $30,000 was appropriated for these purposes. Payment was made in 1852..... 30,000.00

Carried forward ..... $ 86,000.00

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Brought forward		$ 85,000.00
An Act of March 1st, 1854, page 31, Chapter 42, provided for the completion of the barracks, and the erection of a mess hall at the Institute. An amount of $20,000 was appropriated for these purposes to be paid in four installments of $5,000 each.		
Payments were made as follows:		
Year 1854	$15,000.00	
" 1855	5,000.00	
		20,000.00
An Act of March 31st, 1858, page 115, Chapter 162, provides for the completion of Institute buildings, enclosing its grounds, and procuring a supply of water for said Institute. An appropriation of $25,000 was made as follows: $16,000 to meet the deficiency in Building Fund and complete the barracks and mess hall; $6,000 for procuring a supply of water, and $3,000 for enclosing the grounds.		
Payments were made as follows:		
Year 1858	$10,000.00	
" 1859	9,000.00	
" 1860	6,000.00	
		25,000.00
An Act of March 28th, 1860, page 103, Chapter 7, makes an appropriation of $20,000 for additional buildings. Payment was made in 1860		20,000.00
Total		$151,000.00

No. 12.

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Page 1

UNIVERSITY OF VIRGINIA, $25,000.00.

This payment was authorized by the Act of February 28th, 1854, Chapte 36, page 26, as follows:

"Appropriated to the University of Virginia the sum of $25,000.00 fo the purpose of repairing and improving the buildings thereof and for fur nishing a supply of water for the protection and preservation of the sai buildings and other valuable property of the said institution."

No. 13.

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IMPROVEMENTS PUBLIC SQUARE, $1,456.91.

This amount covers sundry expenditures for the improvement of the Square, for work done at the Capitol, for laying water pipes, and for items of $75, being quarterly allowance to the superintendent of the Capitol Square in 1826 and 1827. While the books do not show the exact nature of the improvements, they were charged to "Public Improvements" account on the books of the Commonwealth.

No. 13.

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IMPROVEMENTS CAPITOL SQUARE, $12,278.47.

The items making up this total are as follows:

From General Appropriation:

1825—For guard house	$ 2,700.00
1834—For "graduation" of the grounds about the Capitol, etc.	4,127.59
1838—For water system in Capitol and Governor's house	2,265.70
1851—New gas system	1,024.18
1851— do	880.00
1855—Purchase of lot adjoining Square—Act of April 3rd, 1848	1,280.00
Total	$12,278.47

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No. 15.

PENITENTIARY.

An Act of March 9th, 1833, page 18, Chapter 19, authorized an appropriation, not to exceed $7,000.00, for the erection of a hospital, buildings and sheds for the preservation of timber and manufactured articles, and if necessary to enlarge a part of the outer walls to take them within the enclosure.

An Act of March 11th, 1834, page 6, Chapter 2, authorized an appropriation of $2,500.00 for completing the improvements at the Penitentiary.

Payments were made as follows:

Year	1833	$ 797.44	
"	1834	8,169.43	
"	"	150.00	
"	1835	37.80	
"	"	150.73	
"	"	41.58	
			$ 9,346.98

An Act of March 12th, 1835, page 5, Chapter 2, authorized payment of $3,000.00 to Charles L. Winfield for lots condemned to obtain supply of water for use of the Penitentiary. Payment was made in 1837 ..... 3,000.00

A general appropriation Act of March 5th, 1835, authorized payment of $1,600.50 for iron pipes for conducting water to the Penitentiary. Payment was made in 1840 ..... 1,600.50

Total $13,947.48

No. 17.

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MEDICAL COLLEGE OF VIRGINIA, $25,000.00

This amount was paid under an Act of March 1st, 1860, page 104, Chapter 8, as follows:

"Act appropriating $30,000.00 to the Medical College of Virginia for enlarging the hospital or infirmary, for extending the College buildings, and for improvement and extension of the College museum."

The Medical College of Virginia succeeded the old Richmond Medical College, and was incorporated in 1860 under the above style.

No. 19.

LUNATIC HOSPITALS.

EASTERN ASYLUM, WILLIASMBURG.....	$133,280.19
WESTERN ASYLUM, STAUNTON.....	211,015.38
	$344,295.57

EASTERN ASYLUM AT WILLIAMSBURG, ESTABLISHED UNDER ACT OF JANUARY 1st, 1787:

An Act of March 5th, 1824, page 93, Chapter 90, authorized the Directors of the Hospital to contract for the erection of an additional brick building, containing convalescent apartment for females, not to exceed $5,000.		
Payments were made as follows:		
Year 1824	$ 2,500.00	
" 1825	2,500.00	
		$5,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $6,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1833		6,000.00
An Act of March 12th, 1834, page 27 Chapter 19, authorized the Directors of the Hospital to draw upon the Treasury for money to finish their buildings authorized by the Act of March 1st, 1833, the amount not to exceed $9,000. Payment was made in 1834.....		9,000.00
An Act of March 12th, 1835, page 17, Chapter 17, appropriated $2,660.00 necessary for completion of buildings. Payment was made in 1835		2,660.00
An Act of March 31st, 1837, page 18, Chapter 19, appropriated $1,000 for purchase of land near hospital, a neat 2-horse carriage and a pair of horses, and such other articles as recommended. Payment was made in 1837		1,000.00
An Act covering general appropriations for the year 1837 authorized payment of an amount of $658.88 for buildings. Payment was made in 1837.....		658.88
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1839...		12,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of amount not to exceed $5,000 for enclosures and buildings. Payment was made in 1839		5,000.00
Carried forward		$41,318.88

Brought forward ..... $41,318.

An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not to exceed $12,000 for an addition to the asylum, to be paid in the following manner—viz: $6,000 when the contract is ratified and the bond duly executed, remaining $6,000 on completion of building, provided same shall not be less than twelve months after first payment is drawn.

Payments were made as follows:

Year	1842	$ 6,000.00
"	1844	4,000.00
		10,000.0

An Act of February 12th, 1844, page 17, Chapter 12, authorized payment of $2,000 for the erection of an additional building. Payment was made in 1844.... 2,000.0

An Act of February 14th, 1844, page 16, Chapter 11, authorized payment of $5,000.00 for remodeling and repairing the body of the old building. Payment was made in 1844 ..... 5,000.0

An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount not exceeding $25,000 for additional buildings, to be paid in the following manner—viz: $5,000 on ratification of contract; $5,000 on July 1st, 1848; $5,000 on January 1st, 1849; $5,000 on July 1st, 1849, and $5,000 on January 1st, 1850. Payments were made accordingly 25,000.0

An Act of January 13th, 1849, page 15, Chapter 13, authorized payment of $6,266 for furniture for the additional building, and for such clothing as might be necessary for the additional number of patients to be admitted, and to pay the excess of the price of the buildings contracted for over the appropriation. Payment was made in 1849..... 6,266.0

An Act of January 22nd, 1850, page 16, Chapter 17, authorized payment of an amount of $11,500 for arrears on buildings, and furnishing water and additional accommodation for free colored persons at the Asylum, also to purchase furniture for the new building. Payment was made in 1850..... 11,500.0

An Act of January 21st, 1853, page 126, Chapter 144, authorized payment of an amount of $7,000 for repairing and rebuilding buildings, etc., as follows: $661 for purchase of the "Six Chimney" lot; $1,839 on ratification of contract and execution of bond required; $2,500 after the work shall have been half completed, and $2,000 on completion of the contract hereby authorized.

Payments were made as follows:

Year	1853	$ 2,500.00
"	1854	4,500.00
		7,000.0

Carried forward ..... $108,084.

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Brought forward		$105,084.88
An Act of March 1st, 1854, page 29, Chapter 39, authorized payment of an amount of $17,750 for erecting and repairing buildings and enclosures, for purchasing a lot of land, for the use of the Asylum, for improving its grounds, for providing furniture and other conveniences for the same, $11,750.00, and for lighting the institution with gas, $6,000.00.		
Payments were made as follows:		
Year 1854	$ 3,750.00	
" 1855	6,000.00	
" 1856	8,000.00	
		17,750.00
An Act of March 18th, 1856, page 24, Chapter 17, authorized payment of $7,500 for purchase of certain sections of streets penetrating the lands adjacent thereto for the use of the Asylum. Payment was made in 1856		7,500.00
		$130,334.88
Less—Credit—Building Account		54.69
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account		$130,280.19

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WESTERN ASYLUM AT STAUNTON, ESTABLISHED UNDER ACT OF JANUARY 22nd, 1825.

This Asylum was established under an Act of January 22nd, 1825, page 30, Chapter 35, authorizing directors to purchase a piece or parcel of land, not exceeding four acres, and contract for the erection thereon of a commodious house or houses, for the accommodation of persons of unsound mind. Provided that the whole expense shall not exceed $10,000.00.

Payments were made as follows:

Year 1825	$ 5,000.00	
" 1826	5,000.00	
		$10,000.00

An Act of February 24th, 1827, page 9, Chapter 4, authorized payment of $12,000.00 toward the completion of the Asylum, to be paid by installments as the work progressed.

Payments were made as follows:

Year 1827	$6,000.00	
" 1827	6,000.00	
		12,000.00

An Act of February 17th, 1830, page 9, Chapter 6, authorized payment of $5,000.00 for enclosing buildings of the Asylum and the lot with a suitable wall of stone or brick. Payment was made in 1830..... 5,000.00

Cost of buildings not claimed by Plaintiff as Ordinary Expenses. (See page 22)..... $ 27,000.00

An Act of March 1st, 1833, page 22, Chapter 29, authorizing payment of an amount not to exceed $6,000.00 for the extension of the buildings of the institution so as to make same fit for the reception and accommodation of an additional number of lunatics. That the plan and dimensions of said building shall be agreed upon and prescribed by the directors and shall contain no more than forty cells, or apartments. Payment was made in 1833..... 6,000.00

Carried forward $33,000.00

$

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Brought forward	$ 33,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $1,000.00 to contract for conducting an ample supply of good spring water to the Asylum in iron pipes without the use of forcing pump or other machinery. Payment was made in 1833	1,000.00
An Act of March 12th, 1834, page 27, Chapter 19, authorized appropriations as might be necessary to defray expenses of the additional buildings authorized by an Act of March 1st, 1833. Provided the whole expense shall not exceed $9,000.00 for each hospital over and above the amount already appropriated to these objects by said Act of March 1st, 1833. Payment was made in 1834.....	9,000.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a sum of money in addition to the sum appropriated by Act of March 1st, 1833, for conducting an ample supply of good spring water to the said Asylum in iron pipes, the additional sum not to exceed $1,200.00. Payment was made in 1835.....	1,200.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a further sum not to exceed $1,500.00 in addition to amounts heretofore appropriated by Acts of March 1st, 1833, and March 12th, 1834, necessary for the completion of the additional buildings. Payment was made in 1835.....	1,500.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of an amount of $1,500.00 for completing the graduation and building partition walls for the male and female wards. Payment was made in 1835	1,500.00
An Act of March 22nd, 1836, page 9, Chapter 8, authorized payment of an amount not to exceed $6,000.00, in addition to amounts heretofore appropriated, for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the Act of March 12th, 1835. Payment was made in 1836	6,000.00
Carried forward	$ 53,200.00

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Brought forward		$ 53,200.00
An Act of March 31st, 1837, page 18, Chapter 19, authorized payment of an amount not to exceed $1,000.00 for the purchase of land near hospital, a neat two-horse carriage and a pair of horses, and such other articles as are recommended in the report of the physician of the Western Asylum, and calculated to aid in the restoration of patients confined in a lunatic hospital. Payment was made in 1837		1,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $5,000.00 for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as were recommended by the report of the physician or directors. Payment was made in 1838		5,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000.00 for the extension of buildings so as to make them fit for the accommodation of an additional number of lunatics. Payment was made in 1838.....		12,000.00
An Act of April 10th, 1839, page 14, Chapter 17, authorized payment of an amount not to exceed $5,000.00, in addition to sums heretofore appropriated, for an ample supply of water. Payment was made in 1839		5,000.00
An Act of March 8th, 1842, page 16, Chapter 18, authorized that an amount of $9,060.44 be appropriated to discharge in full, including any claim for interest, the debt due from the Commonwealth to the workmen for completing the additional building to the Asylum. Payment was made in 1842.....		9,060.44
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not exceeding $24,000.00 out of the Treasury of the Commonwealth for entire completion of the additional buildings thereby authorized, as follows: $8,000 on the ratification of the contract and execution of the bond required; $8,000 in twelve months thereafter, and remaining $8,000 on the completion of the buildings, provided the same shall not be in less than twelve months from the last payment.		
Payments were made as follows:		
Year 1842	$ 8,000.00	
" 1843	8,000.00	
" 1844	8,000.00	
		24,000.00
Carried forward		109,260.44

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Brought forward		$109,260.44
An Act of February 12th, 1844, page 16, Chapter 10, authorized payment of $8,000.00 for furnishing the new addition to the Asylum, and to the support and maintenance of said Asylum. Payment of $3,000.00 was made in 1844		3,000.00
An Act of March 4th, 1846, page 19, Chapter 17, authorized payment of $4,000.00 for additional purchase of land. Payment was made in 1846.....		4,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount of $36,000.00 for the completion of additional buildings, as follows: $7,000.00 on the ratification of contract and execution of bond required; $7,000.00 on July 1st, 1848; $7,000.00 on January 1st, 1849; $7,000.00 on July 1st, 1849, and $8,000.00 on January 1st, 1850; provided said buildings shall be completed on the day last aforesaid; if not then, upon the completion thereof.		
Payments were made as follows:		
Year 1848	$ 7,000.00	
" 1849	21,000.00	
" 1850	8,000.00	
		36,000.00
An Act of January 15th, 1849, page 14, Chapter 13, authorized payment of an amount not exceeding $8,500.00 for the puurchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Asylum, and for such clothing as may be necessary for the additonal number of patients to be admitted into said Asylum.		
Payments were made as follows:		
Year 1849	$ 5,000.00	
" 1850	3,500.00	
		8,500.00
An Act of January 19th, 1850, page 15, Chapter 16, authorized payment of $14,500.00 for the purpose of erecting a plain and substantial building, to contain a kitchen, bakery, pantry, store rooms, dining room, chapel, clothes rooms, medicine and library rooms, and other rooms rendered necessary by the great enlargement of said Asylum by previous Acts of the General Assembly.		
Payments to be made as follows: $7,250.00 July 1st, 1850, and $7,250.00 January 1st, 1851, same being sufficient to complete entirely, in the opinion of the directors, the necessary out-buildings in conformity with the present enlarged plan of said Asylum.		
Payments were made as follows:		
Year 1850	$ 7,250.00	
" 1851	7,250.00	
		14,500.00
An Act of February 25th, 1852, page 30, Chapter 36, authorized payment of $5,000.00 for constructing fixtures and apparatus for lighting with gas. Payment was made in 1852		5,000.00
Carried forward		$180,260.44

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Brought forward		$180,260.44
An Act of March 1st, 1854, page 29, Chapter 40, authorized payment of an amount of $34,188.00 to heat the buildings by steam, to erect covered connections and verandas, and to enclose the grounds of the said Asylum, as follows: $15,000.00 for heating by steam, $9,150.00 for erection of covered connections and verandas, $10,038.00 for enclosing the grounds; one-half to be paid during the present fiscal year and the remaining half the next succeeding fiscal year.		
Payments were made as follows:		
Year 1854	$ 7,500.00	
" 1855	7,500.00	
" "	5,000.00	
" 1856	1,800.00	
" "	2,000.00	
" "	5,038.00	
" 1857	5,350.00	
		34,188.00
An Act of March 18th, 1856, page 23, Chapter 17, authorized appropriation of $4,185.82 to pay deficit on steam account of said Asylum. Payment of $1,000.00 was made in 1857		1,000.00
An Act of April 7th, 1858, page 12, Chapter 14, authorized appropriation of $3,685.82 to pay balance of deficit on steam account. Payment of $3,685.00 was made in 1858		3,685.00
An Act of March 19th, 1858, page 116, Chapter 166, authorized appropriation of $10,000.00 to procure a supply of water for the Asylum.		
Payments were made as follows:		
Year 1858	$ 2,500.00	
" 1859	7,500.00	
		10,000.00
An Act of March 17th, 1860, page 81, Chapter 5, authorized appropriation of $13,000.00 for erection of laundry. Payment was made in 1860.....		12,931.99
Amount for support in 1835		7,450.01
		$249,515.38
Less:		
Buildings. (See page 18.)	$27,000.00	
Amounts for furniture already included by defendant:		
Under Act of February 12th, 1844. $ 3,000.00		
Under Act of January 18th, 1849. 8,500.00	11,500.00	
		38,500.00
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account.....		$211,015.38

IN THE

upreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

DEFENDANT'S EXHIBIT D-2

COMMONWEALTH OF VIRGINIA—LITERARY FUND.

TOTAL AMOUNT OF THE FUND SHOWING CASH ON HAND AND INVESTMENTS, AT COST.

	Mch. 19, 1823	Jan. 1, 1861
Cash,	$ 94,021.42	$ 23,985.18
Bank of Virginia stock,	192,013.45	146,832.57
Farmers' Bank of Virginia stock,	109,492.75	102,305.75
Northwestern Bank of Virginia stock,	.....	50,000.00
Bank of the Valley stock,	.....	10,134.00
Fairmont Bank stock,	.....	50,000.00
United States Bank stock,	96,400.00	.....
Richmond Academy stock,	.....	400.00
James River Company stock, the annuity on which was assumed by the Commonwealth in accordance with act passed March 23, 1860,	52,095.00	96,950.00
(1) University of Virginia, loan No. 1,	40,000.00	40,000.00
(1) " " " 2,	20,000.00	20,000.00
(1) " " " 3,	29,100.00	29,100.00
(1) " " " 4,	30,900.00	30,900.00
(1) " " " 5,	.....	40,000.00
(1) " " " 6,	.....	5,000.00
(1) " " " 7,	.....	15,000.00
(1) Emory and Henry College loan,	.....	18,000.00
Washington College loan,	4,000.00	2,000.00
Loans to individuals,	80,000.00	.....
(1) The Faculty of the Medical Department of the Hampden-Sidney College at Richmond. Amount invested in land and buildings,	.....	25,000.00
(2) Medical College in the Valley of Virginia: Amount invested in property (at Winchester),	.....	6,400.00
(2) Davis's book on criminal law, copyright purchased,	.....	12,000.00
(3) John Preston, State Treasurer, balance due,	58,441.07	58,392.49
(3) Preston Smith,	649.45	649.45
United States 6% stock,	12,000.00	.....
James River Company bonds,	50,000.00	65,960.00
Virginia 6% military bonds,	20,964.40	24,039.17
" 7% " "	349,000.00	319,000.00
Virginia 5% internal improvement bonds,	.....	155,750.00
Virginia 6% internal improvement bonds,	.....	803,395.33
Bond of the Auditor of Public Accounts for amount paid into Commonwealth fund in accordance with act passed March 18, 1856,	.....	50,562.55
Total,	$1,240,077.54	$2,201,756.40

(1) Suspended debts.
(2) Unproductive.
(3) Considered lost.

STATEMENT "A"

COMMONWEALTH OF VIRGINIA.

TRANSACTIONS OF THE LITERARY FUND, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

TOTAL FUND, MARCH 19, 1823, PER STATEMENT "A,".....		$1,240,077.54
ADDITIONS TO THE FUND:—		
CASH:—		
FROM THE COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA—Schedule No. 1, ...	$ 114,395.46	
FROM THE COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA—Schedule No. 2, ...	401,972.14	
DIVIDENDS AND INTEREST ON INVESTMENTS OF THE FUND—Schedule No. 3, ...	1,059,695.03	
FROM OTHER FUNDS OF THE COMMONWEALTH OF VIRGINIA—Schedule No. 4, ..	3,109,839.88	
UNITED STATES WAR CLAIMS, LESS COMMISSIONS PAID, ...	182,441.48	
PROFIT ON UNITED STATES STOCK.....	818.18	
TOTAL ADDITIONS, ...		$4,869,162.17
		$6,109,239.71
DEDUCTIONS FROM THE FUND:—		
CASH:—		
FOR ACCOUNT OF THE PRIMARY SCHOOLS:—		
Paid from income from investments, ... $2,400,331.11		
Paid from Capitation Tax, ... 655,908.73	$3,056,239.84	
UNIVERSITY OF VIRGINIA, (at Charlottesville), ...	613,000.00	
INSTITUTE FOR THE DEAF, DUMB AND BLIND, (at Staunton), ...	40,821.02	
VIRGINIA MILITARY INSTITUTE—support,	28,500.00	
MARGARET ACADEMY, (Accomac County), ..	1,500.00	
SALARIES AND EXPENSES OF THE BOARD Schedule No. 5, ...	85,322.45	
PREMIUM PAID ON CITY OF RICHMOND STOCK	420.00	
TOTAL CASH DISBURSEMENTS, ...	$3,825,803.31	
LOSSES:—		
AMOUNT WRITTEN OFF FOR THE REDUCTION IN PAR VALUE OF THE BANK OF VIRGINIA STOCK FROM $100. to $70. PER SHARE. 2121 SHARES, ...	$63,630.00	
LOSS ON UNITED STATES BANK STOCK:—COST—$96,400. SOLD FOR $78,350, ...	18,050.00	
TOTAL LOSSES, ...	$81,680.00	
TOTAL DEDUCTIONS, ...		$3,907,483.31
TOTAL FUND, JANUARY 1, 1861, PER STATEMENT "A,".....		$2,201,756.40

STATEMENT "B."

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc	$ 58,059.46
Escheats, less refunds and expenses, ...	4,603.57
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	49,726.61
Sales of runaway slaves and free negroes, less refunds, ...	2,005.82
Total, ...	$114,395.46

STATEMENT "B".

Schedule No. 1.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc., ...	$306,856.98
Escheats, less refunds and expenses, ...	51,400.55
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	3,996.91
Sales of runaway slaves and free negroes, less refunds, ...	14,514.40
(1) Bristoe Estate:—	
Sale of lots in Prince William County, ...	17,289.18
Net income, ...	7,914.06
Total, ...	$401,972.14

(1) The books of original entry and published reports do not record the origin of the Bristoe estate. It is presumed to have been the property of Robert Bristoe, a British subject, which escheated to the Commonwealth.

STATEMENT "B".

Schedule No. 2.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

INCOME FROM INVESTMENTS AND LOANS, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Dividends on bank stock:—		
Bank of Virginia,		$ 424,209.83
Bank of the Valley,		12,373.00
Farmers' Bank of Virginia,		272,681.75
Northwestern Bank of Virginia,		89,500.00
Fairmont Bank,		2,000.00
Total,		$ 800,764.58
Dividends on James River Company stock, subsequent to dividend of January 1, 1835, received from the James River and Kanawha Company,		155,291.08
Dividends on Richmond Academy stock,		440.88
Dividends on United States Bank stock,		11,350.00
Interest on loans to and dividends on stock of City of Richmond,		16,531.71
Interest on United States 6% stock,		3,200.40
Interest on bonds of the Valley Turnpike Company, guaranteed by the State,		2,090.00
Interest on loans:—		
Emory and Henry College,	$ 3,240.00	
Loans to individuals,	34,241.48	
Library fund,	8,477.76	
Medical College at Winchester,	1,974.93	
Richmond Medical College,	6,552.21	
University of Virginia,	7,200.00	
Washington College,	8,340.00	
Total,		$ 70,026.38
Total,		$1,059,695.03

STATEMENT "B".

Schedule No. 3.

Def. Ex. D-2
Page 5

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

RECEIPTS FROM OTHER FUNDS OF THE COMMONWEALTH, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

COMMONWEALTH FUND:—		
Capitation Tax,	$ 751,481.63	
United States war claims,	77,216.28	
Interest,	926,919.28	
Total,		$1,755,617.1
INTERNAL IMPROVEMENT FUND:—		
Interest,	$1,303,535.77	
Dividends on James River Company stock, to and including dividend of January 1, 1835, and the July 1, 1860 dividend,	50,686.92	
Total,		$1,354,222.6
Total receipts from other funds,		$3,109,839.8

STATEMENT "B".

Schedule No. 4

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

SALARIES AND EXPENSES OF THE BOARD, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

SALARIES:—		
Second Auditor,	$33,342.84	
Clerks,	35,504.51	
Special Accountant,	100.00	
President,	2,326.81	
Directors,	4,556.50	
Messenger,	1,748.27	
Tax on above salaries	251.31	
Total,		$77,830.1
EXPENSES:—		
Advertising,	$ 123.13	
Legal expenses,	189.55	
Printing,	4,348.89	
General,	2,830.64	
Total,		$ 7,492.
Total salaries and Expenses,		$85,322.

STATEMENT "B".

Schedule No. 5.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Cash in Fund, March 19, 1823, per Statement "A",			$ 94,021.42
RECEIPTS:—			
From the counties now constituting the State of West Virginia—Statement "B", Schedule No. 1..		$ 114,295.46	
From counties now constituting the Commonwealth of Virginia—Statement "B", Schedule No. 2,		401,972.14	
Dividends and interest on investments of the fund—Statement "B", Schedule No. 3,		1,059,695.03	
From other funds of the Commonwealth of Virginia:—			
Statement "B", Schedule No. 4,	$3,109,539.88		
Commonwealth Fund—Redemption of 7% Military Debt,	30,000.00		
Internal Improvement Fund. On account of balance due from J. Preston, State treasurer, ..	48.67	3,139,888.55	
United States war claims, less commissions paid		182,441.48	
Profit on United States stock		818.18	
Investments converted into cash:—			
United States 6% stock redeemed,	$ 13,000.00		
Farmers' Bank of Virginia stock sold,	9,762.00		
United States Bank stock,	78,350.00		
Loans to individuals, repaid to Literary Fund	80,000.00		
Loans to Washington College, repaid to Literary Fund	2,000.00	183,112.00	
Total Cash Receipts,			5,082,322.84
			$5,176,344.26

STATEMENT "C".

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

DISBURSEMENTS:—

For account of the primary schools:—		
Paid from income from investments, ...	$2,40[illegible]31.11	
Paid from Capitation Tax, ...	65[illegible]908.73	$3,056,239.84
University of Virginia, (at Charlottesville), ...		613,000.00
Institute for the Deaf, Dumb and Blind, (at Staunton), ...		40,821.01
Virginia Military Institute—support, ...		28,500.00
Margaret Academy, (Accomac County), ...		1,500.00
Salaries and Expenses of the Board—Statement "B," Schedule No. 5, ...		85,322.45
Premium paid on City of Richmond stock, ...		420.00
Investments in stocks, bonds, etc., at cost:—		
Farmers' Bank of Virginia stock, ...	$ 2,575.00	
Virginia revolutionary 6% bonds, ...	3,074.77	
James River Company stock, ...	44,855.00	
Bank of Virginia stock, ...	18,449.12	
University of Virginia, loan No. 5, ...	40,000.00	
" " " loans No. 6 and No. 7, ..	20,000.00	
Virginia Internal Improvement 5% bonds, ...	155,750.00	
" " " 6% bonds, ...	803,395.33	
James River Company bonds, issued under act passed February 17, 1820, ...	15,960.00	
Richmond Academy stock, ...	400.00	
Northwestern Bank of Virginia stock, ...	50,000.00	
Bank of Valley stock, ...	10,134.00	
Loan to Emory and Henry College, ...	18,000.00	
The Faculty of the medical department of the Hampden-Sidney College, at Richmond; amount invested in land and buildings, ...	25,000.00	
Paid into the Commonwealth Fund in accordance with act passed March 18, 1856, ...	50,562.55	
Davis's Book on Criminal Law, copyright purchased, ...	12,000.00	
Fairmont Bank stock, ...	50,000.00	
Medical College in the Valley of Virginia; investment in property at Winchester, ...	6,400.00	1,326,555.77
Total Cash Disbursements, ...		$5,152,359.98
Cash in Fund, January 1, 1861, per Statement "A", ...		23,985.15
		$5,176,344.13

The foregoing Statements and Schedules on pages 1 to 7, inclusive, certified correct:

CLIFFORD E. SCOVILLE. THOMAS BIRD DIXCY, For the Defendant.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 7 inclusive, and find them correct, but that all items contained herein affecting this accounting are included in other Exhibits.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO., For the Plaintiff.

STATEMENT "C".

(Concluded.)

Other Evidence and Proceedings Relating to Paragraph IV of the Decree.

[*Vol. 1. Nov. 16, 1908.*] 61

After Recess.

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH IV OF THE DECREE.

ARTHUR G. POTTER,
testified as follows:

By Mr. Anderson:

Q. Mr. Potter, please take that statement marked "Plaintiff's Exhibit D-1—

The Special Master: Does this relate to paragraph 4?

Mr. Anderson: Paragraph 4; yes, sir.

By Mr. Anderson:

Q. Please examine that statement and state what it is a statement of, what it embraces, and state your knowledge in regard to the items which make up that statement, as well as to the correctness of the figures and the facts mentioned in it.

A. The schedule is the statement of the ordinary expenses of Government—

The Special Master: Of Virginia? 62

A. Of the State of Virginia between 1820 and 1860, both inclusive. It contains information which I took from the public reports of the Auditor of Public Accounts for the State of Virginia. The totals were taken off by myself personally and verified by my assistants, and I believe it to be correct.

By Mr. Anderson:

Q. You say the totals were taken off by yourself personally?

A. By myself personally and were verified by figures taken by my assistants.

The Special Master: Have you computed the proportions as required by Paragraph IV?

Mr. Anderson: Yes. sir; that is responsive to paragraph IV. It shows the proportions with and without slaves.

By Mr. Spooner.

Q. Does that embrace the items?

A. It embraces a summary statement of the items, not the individual details. That gives the total of the various classifications, without the items that make them up.

Mr. Anderson: I wish to say to the Master and to counsel that that statement embraces items embodied in a large number of subsidiary statements, one or two hundred pages, with which I do not think it is necessaary to encumber the record at present.

The Special Master: Do I understand that you offer the details from which this summary was compiled?

Mr. Anderson: Yes, sir.

The Special Master: And it is admitted *de bene,* and to be 63
turned over to the other side, receipted for by them, and to be used by them as the other details are to be used in connection with item I?

Mr. Anderson: Yes, sir.

The Special Master: We will mark that right now, Plaintiff's Exhibit D 2, if that contains all the details, so that we will have it identified, offered and admitted.

Mr. Spooner: Is that the one you are offering in evidence?

Mr. Anderson: Yes, sir. I do not wish it to go into the record unless you desire it.

Mr. Spooner: All we want is to have it where we can get at it. The question as to what is an ordinary and what is an extraordinary expense is a question of law, and we want to see what the statement contains.

The Special Master: I want this to go into the record and be identified. Then I will turn it over to counsel for West Virginia, and take their receipt for it. This is marked, "Plaintiff's Exhibit D 2." When you give me your receipt for the other papers, you can include this in it. All questions as to the ordinary or extraordinary character of the expenditures can be raised later.

Mr. Spooner: That is the reason it will be necessary for us to examine them.

By Mr. Anderson:

Q. Please state your knowledge as to the correctness of the statements embodied in this exhibit, Plaintiff's Exhibit D No. 1, in general and in detail, and to what extent you have verified 64
that record from the public records of the Commonwealth.

A. We have relied almost exclusively on the published reports of the Auditor of Public Accounts, in so far as that portion is concerned that applies to the expenses of government for the Commonwealth disbursed by the Treasury. Included there are two statements, one of the Board of Public Works and one of the literary fund, for miscellaneous expenses. Those were taken, in the case of the Board of Public Works, from the published reports, verified by the Second Auditor's ledger. In the case of the Literary Fund, they were taken directly from the Literary Fund ledgers and journals, verified by myself and my assistants conjointly, and I believe them to be correct.

By Mr. Spooner.

Q. If I understand you, that statement is based upon public records. You stated you had based it almost exclusively upon published reports?

A. Public printed records in the proceedings of the Board of Public Works.

Q. That leaves a margin—"almost exclusively." What is the rest of it?

A. That portion of it relating to the Literary Fund, which we took from the ledgers and journals of the Literary Funds, and not from published reports.

By the Special Master:

Q. But with that exception they are based upon the published reports?

A. Yes, sir. 65

By Mr. Anderson:

Q. You believe them to be correctly deduced from those records?

A. Yes, sir.

Mr. Anderson: I will ask to have these papers filed.

(The papers referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Ordinary Expenses of Government. Article IV," are filed herewith, marked, respectively, "Plaintiff's Exhibit D 1" and "Plaintiff's Exhibit D 2.")

Mr. Anderson: That is all we desire to introduce in response to the fourth paragraph of the decree. Do our brethren on the other side desire to ask any questions?

Mr. Spooner: Not at this time.

Mr. Anderson: I understand you do not intend to estop yourself from future cross examination. We will pass to the next one.

This relates to the general subject, and is an alternative statement, really under the same general direction.

[*Vol. 4. May 5, 1909. Cross Examination of A. G. Potter.*]

[By Mr. Carlisle]:

Q. We will take Exhibit 4, Schedule 1.

The Special Master: The way the exhibits are numbered, as I have them on my desk here, is "Plaintiff's Exhibit A-1, B-1, C-1, and so on.

Mr. McClintic: This is Article 4 of the ordinary expenses.

The Special Master: What is the exhibit? 223

Mr. McClintic: D-1, as we know it.

The Special Master: As a matter of convenience in tracing out the record, we had better have these exhibits referred to by the name they bear in the record. Then we can trace the record without any difficulty. Plaintiff's Exhibit D-1 is the one you have in mind now?

Mr. McClintic: Yes, sir.

The Special Master: What page do you refer to, Mr. McClintic?

Mr. McClintic: The fourth page of Schedule 1, in the upper right hand corner.

Mr. Carlisle: The first entry in this is "General Assembly," $4,130,064.55.

Mr. Anderson: What page is that, Mr. Carlisle?

Mr. Carlisle: On the very first page.

The Special Master: It is really the third page of Schedule 1. It is the third page in the chronological order.

By Mr. Carlisle:

Q. How did you ascertain that amount, $4,130,064.55?

A. By taking the forty items under that heading, in the forty annual statements in the auditor of public accounts.

Q. When you say the forty items, you mean the forty totals?

A. The forty totals.

By the Special Master:

Q. Beginning with what year?

A. The fiscal year 1820. 224

Q. And running up to 1861?

A. To January 1, 1861.

Q. This aggregate here is the result of forty aggregates?

A. Yes; taking the annual statements for those forty years.

Q. The aggregates given in the annual statements make this amount?

A. Yes.

By Mr. Carlisle:

Q. Then you did not go back to the books of original entry in any year, did you?

A. No, sir.

Q. To see whether the published statement as to the account of expenses on that account was correct or was not correct?

A. I did not compare them.

The Special Master: That is, you mean whether the aggregate for any particular year would agree with the totals added up?

Mr. Carlisle: Yes, I ask him whether he went back in any single year and examined the original books to see what was included under this head of expenditures on account of the general assembly?

A. No, sir; I did not.

By Mr. Carlisle:

Q. So all you did on that subject was that you found certain figures in the annual report?

A. Yes, sir. 225

Q. Whether those totals included things which were not properly expenditures on account of the General Assembly, you do not know?

A. I have not verified it; no, sir.

Q. Now, one or two others. I will not take up time by going into each item. Take "Officers of the Government, "$3,595,102.14. What have you to say about that?

A. The same statements are true regarding that.

Q. The same statements as to that?

A. Yes, sir.

Q. You do not know what items compose these totals which you took from the books?

A. No, sir.

Q. No, "Criminal charges?" $1,750,732.11.

A. The same is true as to that?

Q. You do not know what items compose it, do you?

A. I have not gone back to the original records to verify the statements.

Q. You do not know whether anything was or was not included in that which did not belong there properly? In other words, you have no information except what you saw on the official printed reports?

A. No, sir.

Q. Do you think that is a proper way to ascertain the expenditures of the State for the purpose of litigation? I ask you now as a public accountant.

A. As we had a balanced cash statement—

Q. Can't you answer the question? I will put it this way. If you were employed by the State of New York to ascertain 226
the total expenditures of that State for a period of years for different purposes, would you or would you not go to the original books to ascertain it, or would you take what you would find in the printed reports of the officials?

The Special Master: With reference to direct answers, I will make this suggestion. I think it is quite proper for the witness, perhaps, to make his answer as direct as he can; but at the same time, if the witness desires to do so, he has a perfect right to add, by way of explanation, anything he likes. The regular and ordinary way is to get the direct answer, and then if he has occasion to make any explanation, he can make it at the same time, if he likes.

Mr. Spooner: The best way is the usual way. If the question is susceptible of a direct answer, it should be given.

Mr. Harrison: He has a right to answer the question in his own way, though.

The Special Master: Certainly.

Mr. Carlisle: Provided he answers it.

The Special Master: I simply make that suggestion to the witness. Witnesses all have that trouble. They are quite likely to make the explanation before they answer the question. The better way is to answer the question and then make such explanation as they think they ought to make.

Mr. Carlisle: The witness can make his statement in his own way after he has answered the question, but he must answer the question.

The Special Master: I have just had a week's experience in regard to that matter. 227

(The question was read, as follows):

"Q. If you were employed by the State of New York to ascertain the total expenditures of that State for a period of years for different purposes, would you or would you not go to the original books to ascertain it, or would you take what you find in the printed reports of the officials?"

A. I don't think I can answer that question directly, because it would depend on what the particular purposes were.

By Mr. Carlisle:

Q. You know what the purposes were here?

A. Various purposes, you say.

Q. You had the decree of the Supreme Court before you, did you not?

A. Yes, sir.

Q. That showed you for what purpose the examination was made, did it not?

A. Yes, sir.

Q. You were to ascertain certain things?

A. Yes, sir.

Q. As specified distinctly in that decree?

A. Yes, sir.

Q. Of course you knew you were to be a witness, and were to come on the stand and testify. Do you think it was a proper thing just simply to take the printed reports, without verifying the items contained in the totals as shown in those reports?

A. I do.

Q. Why? 228

A. Because they were the published reports of the State. They were made for submission to the General Assembly and other officials. They were made by a competent auditing authority in the State, and I believe they furnished a very good record.

Q. You thought you could tell from the totals stated in the official reports whether they did or did not include the things which are separated distinctly in this decree? For instance, you might find in some total—we will take the general assembly—something which, if you had gone back to the books of original entry, did not properly belong in that account, but belonged in some other account—public improvements, educational purposes, or something of that sort. You relied, then, upon the judgment of the officials alone, and not upon your own investigation?

A. Yes, sir.

Q. So you did not distribute any of these accounts in any way, as required by this decree, unless the officers of the State had distributed them in that way in their reports?

A. No, sir.

Q. Is that the fact?

A. Yes, sir; that is the fact.

The Special Master: That is, he assumed, without further investigation, that the aggregates made by the officers were accurate?

Mr. Carlisle: Yes.

The Special Master: That is what it comes down to. He proceeded upon that assumption.

Mr. Carlisle: That is substantially what he says; yes, sir. 229

By the Special Master:

Q. Is that true of all the items you have in schedule 1?

A. Yes, sir.

The Special Master: I asked that simply to save time.

Mr. Carlisle: That saves time; yes, sir.

The Special Master: So that all these are of the same character and proceed on the same assumption.

Mr. Harrison: It is schedule 1, item 4, in Exhibit D-1.

The Special Master: Schedule 1 in Plaintiff's Exhibit D-1?

Mr. Harrison: Yes, sir.

The Special Master: Schedule 1 ends, as I understand it, on what is called the second page, and the aggregate is $21,209,952.03. Am I right about that?

A. Yes, sir.

The Special Master: So that you proceeded on the same assumption with reference to all the items making up that aggregate that you did in connection with the General Assembly, in the items about which you have testified?

A. Yes, sir.

The Special Master: That cleans up that schedule.

By Mr. Carlisle:

Q. On Schedule 9 of D-1—

The Special Master: I think, for convenience of reference, I will have all these schedules paged, so that we can refer to the pages in the schedule. Then we can trace it out without any 230
difficulty. Schedule 9 is on the last page of Plaintiff's Exhibit D-1, as I have it. Am I right about that? That is the schedule you are inquiring about, Mr. Carlisle?

Mr. Carlisle: D-1.

The Special Master: It is on the last page of Plaintiff's Exhibit D-1?

Mr. Carlisle: Yes, sir; the last page.

The Special Master: I will ask Mr. Potter to page his schedules, in all these schedules we have here, so that we can make reference by pages as well as by schedule, and we will not have any difficulty in tracing them out later on, when we have occasion to examine the facts.

By Mr. Carlisle:

Q. On that page you include in your account, as a part of the ordinary expense of the State of Virginia during the period which you were directed to investigate, the sum of $20,606,229.24, for interest paid on the public debt. From that you deduct certain credits, which reduces the amount of that item to $18,024,358.62. What did

you find about that in the books, in what books, and where did you get it?

The Special Master: That is, on what books of original entry did he find these entries?

Mr. Carlisle: Yes; what official books. I ask the general question.

The Special Master: Either books or reports?

Mr. Carlisle: Yes.

A. All items of interest on the public debt paid by the board 231
of public works, I took from the board of public works original books.

By the Special Master:

Q. You mean you found it entered there as a charge of interest?

A. As a charge of interest, yes, sir.

By Mr. Carlisle:

Q. That is, the $5,834,000?

A. Yes; those first two items.

Q. Now, the next one?

A. Third item I got from the reports of the auditor of public accounts, and did not refer to the original books.

Q. What was that bank debt? Did you investigate it to see what it was?

A. It was an issue of bonds for the purpose of a subscription to the Northwestern Bank of Wheeling and the Exchange Bank of Norfolk, if I remember rightly. I can tell you the amount of it.

Q. Did you find that on the books of the Board of Public Works?

A. No; not that account. That was paid by the treasurer of the Commonwealth, entered through the books of the auditor of public accounts.

Q. Out of what we call the Commonwealth fund?

A. Yes, sir.

Q. The next one is interest on the public debt, C. & O. Canal, paid by the treasurer of the Commonwealth, $270,479.25. Where did you get that?

A. From the published reports of the Auditor of Public Ac- 232
counts, Commonwealth books.

Q. I will get you to state to the Master whether that was a direct indebtedness upon the part of the State of Virginia, if you examined that question, or whether it was only in the form of a contingent liability, guaranteed?

A. Just a moment. I will have to examine that.

The Special Master: Do you mean whether the State paid it as guarantor, or as principal?

Mr. Carlisle: Yes; we say the State paid it as guarantor, and the Company owed the State the money.

The Special Master: Your inquiry is intended to disclose what the fact is?

Mr. Carlisle: Yes.

The Special Master: Whether the Commonwealth paid it as a guarantor, or whether it paid it as a part of its principal debt;—its own indebtedness?

Mr. Carlisle: Yes; that is what I want to get at.

A. I believe the State issued the bonds, $250,000.

By Mr. Carlisle:

Q. You say you believe. Did you examine the question?

A. Yes, sir.

Q. Did you find it to be a fact that the State issued the bonds?

A. I did.

Q. Have you a memorandum to show when the State issued the bonds? 233

A. They were authorized by Act of February 20, 1833.

Q. Authorized?

A. And issued under that Act.

Q. Now, I want to ask a question on that very point. When you found an act of the legislature authorizing the expenditure of money for a certain purpose, did you trace it up to see whether they actually did expend it or not? In other words, I will put it in this way, to make it shorter. Did you not, when you saw an act authorizing the expenditure of a sum of money, just assume that it had been expended, and charge it?

A. No, sir.

Q. You did not go to the books?

A. We started at the other end. We took the expenditure and worked back to the Act authorizing it. We did not go to the Act first, and find out what was authorized, and then find out what was spent under it.

By the Special Master:

Q. You mean you found the charge on the books and then traced it back to see what legal authority there was for the expenditure, and therefore landed on the Act in that way?

A. Yes, sir.

By Mr. Carlisle:

Q. Did you examine all those acts?

A. I can't say we examined all of them.

Q. You did not personally examine the acts?

A. No.

Q. Or your assistants under your direction? 234

A. But we did not take the acts of the assembly and go through them. We referred to the acts when it was necessary to get authority for a payment.

Q. "Interest on public debt paid by the sinking fund," December 21, 1860, of $11,762,509.04. Where did you get that item?

A. From the sinking fund original books.

Q. Can you state what date that was paid or a part of it was paid? Just state generally what that debt was, what it was created for, if you know?

A. Well, that was the interest paid—I can't answer that question without reference to my original papers.

The Special Master: You mean, Mr. Carlisle, the purposes for which this public debt was created? Is that what you want him to state?

Mr. Carlisle: Yes; I want to know whether he can state what it was for.

By Mr. Carlisle:

Q. "Interest on the James River and Kanawha guaranteed bonds, paid by the treasurer of the Commonwealth," $617,542.62. Did you examine the books of original entry for that?

A. No sir; we took that from the published reports. I would like to qualify my statements to this extent, that between October 1st and December 31, 1860, it was necessary to refer to the books of original entry in the commonwealth accounts. Otherwise we depended on the published reports, for that was the division of the year.

Q. The first of the year was September?

A. Yes, sir; the year ended on September 30, 1861. We 235 had to examine the books from the first of October, 1860, to December 31, 1860, to get the amount applicable to that year.

Q. That is, just one year you went to the original books?

A. Yes, sir.

Q. That is, a part of one year?

A. Yes, sir.

By the Special Master:

Q. That brought you up to the 1st day of January 1861?

A. Yes, sir.

By Mr. Carlisle:

Q. I understand from that that in cases where you took the

official printed report as the basis of your entries in the report, you took them by the fiscal years?

A. Yes, sir.

Q. Which began on the 1st day of October in each year?

A. Yes, sir.

Q. So any figures which you got from the official reports for the year 1820, we will say, went back to the 1st of October, 1819, did they not?

A. I think there was a change in date of the fiscal year along in 1820 or 1821. It was approximately, though, the first of October. I won't state positively that it was that date.

Q. Whatever you took from the official books for the fiscal 236
year 1820, took you back to the year 1819, did it not?

A. Yes; the latter part of 1819.

Q. And you could not discriminate so as exclude anything that occurred in 1819, any expenditure made then or any receipts then, from the receipts or expenditures which actually were made in the calendar year 1820?

A. We did not.

Q. Therefore your account begins back in 1819?

A. Yes; it begins with the fiscal year ending September 30, 1820?

By the Special Master:

Q. Your account is predicated upon the fiscal rather than the calendar years?

A. Yes, sir.

By Mr. Carlisle:

Q. Was any part of this public debt created in 1819, so far as you found?

A. There was no part of the public debt; no, sir.

Q. You read the decree, did you not?

A. Yes, sir.

Q. Which said you must take the account for the period during which this debt was created?

A. There was no part of the public debt, as stated in the schedule. There were obligations by the State which antedated 1819.

Q. I do not mean antedated it. Were there any in 1819. Antedated would be 1818 or 1817, or sometime along there.

A. There was an obligation on the part of the State to pay
interest or an annuity to Washington and Lee College, with 237
respect to $50,000 worth of old James River Stock, which was presented by General George Washington to the College and that obligation was later exchanged for a manuscript bond. That obligation was in existence in 1819.

Q. Whose obligation was it?

A. The obligation of the James River Company, guaranteed by the State of Virginia.

Q. Guaranteed by the State of Virginia?

A. Yes.

Q. When was that issued?

A. We have not been able to find the date of the issue of that stock.

Q. Then why did you go back to 1819 to begin your accounts?

A. The primary reason was that the first issue of State bonds under the name of James River Loan No. 1, for $161,600 was dated in the fiscal year ending September 30, 1820.

Q. It had a specific date on it, did it not?—some day of the month?

The Special Master: What date was it?

A. The loan was authorized by an act of February 17, 1820

By Mr. Carlisle:

Q. The calendar year 1820?

A. Yes, sir; the first certificate was issued—

Mr. Spooner: Is that one of the certificates you have there?

Mr. Conrad. No. Let him answer.

Q. State your answer in your own way. I will ask you 238 this question—

The Special Master: Do you want that question answered, when the first certificate was issued?

Mr. Carlisle: Yes.

The Special Master: Well, give that.

A. July 15, 1820.

By Mr. Carlisle:

Q. Now, Mr. Potter, if you did as you say you did, if you took the official report for the fiscal year 1820, which took you back to September 30, 1819, and made that the basis of your accounting, when the decree says that you shall simply take these accounts during the period when the debt was being created, is not your whole account vitiated by that basis which you have assigned—if you are wrong? If you have done what you say you did, and if the decree excluded everything prior to September 1820—is not your entire account permeated by that error, and are not all your totals affected by it?

Mr. Conrad: What error is that?

Mr. Carlisle: By beginning in 1819?

Mr. Conrad: But that is assuming what does not exist.

Mr. Carlisle: Well, I am assuming. I say if that is wrong.

Mr. Harrison: That is a hypothetical question.

Mr. Carlisle: But I am taking what he says.

Mr. Conrad: If you will pardon me, that is not exactly what he says. He says he started here with an appropriation made under an Act of February, 1820. That was the foundation. You assume that he started with an appropriation made in the year 1819, and speak of it as an error that pervades all of this settlement. If you will pardon me, I do not think that is quite fair to the witness. 239

Mr. Carlisle: The witness, I suppose, thinks he took the proper date to begin with. I ask him, if you did not get the proper date and went back and included in your accounts charges against West Virginia and credits to West Virginia, and amounts of ordinary expenses and other things which are covered by this decree, during a period which the decree did not authorize you to take, is not your whole account affected by that error, if it was an error?

A. If there were errors, of course—

The Special Master: The question is if you began your account at a too early date, and it turns out later to be erroneous for that reason, whether that error would pervade your whole account. That is the substance of the proposition. It is not for you to say, whether you did begin too early or did not, but assuming that you did begin earlier than you ought to have begun, the question is does that error, if it is an error, pervade the whole account, and would it disarrange your final result?

Mr. Carlisle: All his totals.

The Special Master: Yes; all your totals?

A. It would disarrange them to the extent of the expenditures and receipts between the date at which I started and the date at which I should have started if I did make an error in starting.

By Mr. Carlisle:

Q. That would affect your entire account?

A. It would affect the totals, yes, sir. 240

Q. It would affect all the totals?

A. Yes, sir.

Q. I understand you to say, as a matter of fact—

By the Special Master:

Q. I want to ask you this right here. Would it be necessary, in order to get a correct result, assuming that you began too early, and for that reason the account is erroneous in the record, to recast the whole account?

A. No, sir.

Q. You do not think you would have to do that?

A. I know I would not.

Q. You think you could eliminate the erroneous items, and reach a result without recasting the whole account?

A. Yes, sir.

By Mr. Carlisle:

Q. Will you state to the Master just how you would do that. These erroneous sums, if they are erroneous, would be carried into every total you made up. Would you not have to revise all your totals?

The Special Master: Mr. Carlisle has in his mind now items of expenditure from the various counties also predicated upon this early date, and that would enter into the final total.

Mr. Carlisle: All the charges against West Virginia, credits to West Virginia, ordinary expenses,—everything covered by the decree which involves an accounting would be affected.

The Special Master: The simple question right here now 241 is, assuming there was an error in the record, whether he could rearrange his accounts without recasting them, and eliminate those errors.

A. I could; yes, sir.

By Mr. Carlisle:

Q. Would you not have to revise everyone of your totals? If you have included there something which ought not to be included would you not have to take it out of every one of your totals, every item?

A. Every total in which any of those figures enter.

Q. By totals, now, I mean for the purposes of this hearing, these items which you have stated here, which I have just read from. Take the $5,000,000 first, then the $1,000,000, and the $360,000 on this paper. Would you not have to revise each one of those?

The Special Master: You refer to the interest items in schedule 9?

Mr. Carlisle: Schedule 9, Exhibit D-1.

The Special Master: The question is whether you would not have to revise all those items of interest in case you began at a too early date—that is, whether or not those items do not in some way enter into those aggregates of interest?

A. Yes; but it would be no difficult matter to eliminate the items between the date at which I did start and the date at which I should have started.

By Mr. Carlisle:

Q. Let us see if there is no difficulty about it. I would 242 find it very difficult. Would you not in order to eliminate

those items have to go to the books of original entry in each instance, because you took the aggregates from the published reports?

A. If we started in the middle of the fiscal year, I would have to go to the books of original entry.

Q. If it started in the middle of the year?

A. Yes.

Q. I am talking about the first year, the basis if your accounts. Would you not have to go back to the original books of entry, ascertain the exact date, and the amount of each item during the period you have mentioned?

A. I don't understand your question.

Q. To show you what I mean I will take this item—"Officers of the general Government," $3,595,102.14. If it should turn out that you had included in that item, which you took from the official reports for that fiscal year, something which ought not to have been included, under the decree, would you not have to go back to the books of original entry to find what that was?

A. It would depend entirely on what it was.

Q. You could not find out what it was, could you, until you went back to the original books?

A. I don't know. It would depend on what you said it was. For instance, if you asked me to take out all of the expenses of the first fiscal year, which I included in that total, I could do that. If you asked me to take out one half of the expenses of the fiscal year, I would have to analyze the books, to find out what that one-half consisted of. 243

Q. Suppose I ask you to take out of that account all the items now included in it which belonged to the calendar year 1819—leaving out the fiscal year now, but during that calendar year. Would you not have to go to the original books to find what to take out?

A. I would.

Q. That is what I mean exactly. Then you would have to make a corresponding change all through your accounts, would you not, because your basis then would be wrong? I mean the basis you have adopted here?

A. We would have to make changes in every account affected by the figures in that year, but it does not necessarily follow that all the accounts were affected.

By the Special Master:

Q. Would that be feasible without a recomputation; or could you make a recomputation and make a deduction and get an accurate result?

A. Yes, sir; I could.

Q. You think you could take an item back prior to 1819 and reach your conclusions that would be involved in connection with these other items, and simply make a deduction at the end instead of recasting and recomputing?

A. Yes, sir; prior to 1820.

Q. I mean prior to 1820.

A. Yes, sir.

The Special Master: That is what you wanted, was it not, Mr. Carlisle?

Mr. Carlisle: Yes. 244

By Mr. Carlisle:

Q. Mr. Potter, will you state to the Master why you included the interest on the public debt as a part of the ordinary expenses of the State of Virginia?

A. Out of deference to the opinion of the attorneys for the Virginia side.

Q. That is what I supposed. You were advised to do that.

The Special Master: You were so instructed. That is about it.

Mr. Conrad: He was so instructed, and we have authority for it, sir.

Mr. Carlisle: It is not necessary to raise that question now. The question as to what are ordinary expenses, we think, is a question of law for the court.

The Special Master: Up to the present time the Master is advised that the State of Virginia has one contention in reference to that matter, and West Virginia another.

Mr. Carlisle: Certainly. The business of the Master is, under the decree, to ascertain facts, and then we will discuss the law, if we are able to do it, before the Supreme Court.

The Special Master: I do not apprehend there is much difficulty about that.

By Mr. Carlisle:

Q. Suppose you carried your accounts beyond the proper period under the decree—assuming that, now—if you carried your accounts to a date which was not required or authorized by 245 the decree, how would you correct that?

A. By deducting the amounts in the same manner as I would in the matter explained.

Q. By deducting the amounts which were corrected after the—

A. Yes, sir.

Q. That would involve as much labor as the other?

A. No, sir; not quite.

Q. I wish you would describe that certificate or whatever it was which you say was issued in July, 1820?

A. The only description I can give you at this time is that it is certificate No. 1 of James River loan No. 1, issued under authority of Act of Legislature February 17, 1820.

The Special Master: Certificate No. 1, issued when?

A. Certificate No. 1 was issued on the 15th of July, 1820.

Mr. Harrison: Under authority of the act of February 17, 1820?

A. Yes, sir.

By the Special Master:

Q. Have you any of those original certificates?

A. No, sir; this one is a blank certificate under that law.

Q. This certificate you have just shown me relates to an act of the legislature of 1821. It could not very well have been issued in 1820?

A. I think you will find two dates on it, both February 17, 1820, and February 20, 1821.

Q. But how are you going to get that into a printed docu- 246
ment in 1820?

A. That must have been a later print of the certificate that was issued.

Q. Is the certificate which you refer to as having been issued in July, 1820, a certificate by the Commonwealth or a certificate by the railroad company?

Mr. Conrad: By the James River Canal Company.

The Special Master: By the railroad Company?

Mr. Conrad: The James River Canal Company.

Mr. Anderson: The navigation company?

A. It was issued by the James River Company.

By Mr. Carlisle:

Q. You said you had a certificate issued under the act of 1819, certificate No. 1.

The Special Master: 1820.

Mr. Carlisle: Yes, but issued under that act of February 17, 1820, entitled "An Act to Amend an Act entitled 'an Act to improve the navigation of the James River.'" Did you examine that certificate?

A. I never have seen certificate No. 1; no sir.

Q. Then how do you know it imported an obligation on the part of the State of Virginia?

A. I have consulted the register. That is the first bond entered in that register. I presume you mean if this is—

Q. How do you know that certificate to which you refer, which

was issued in 1820, was an obligation upon the part of the State of Virginia, either in substance or in form?

The Special Master: Directly or indirectly.

Mr. Carlisle: Yes; directly or indirectly. 247

The Special Master: While he is looking for that, has any one here the Act of 1820, or a copy of it, so that I may have it before me as he is being examined?

Mr. Anderson: Yes; I have a copy of it.

Mr. Conrad: It is not that certificate you have there, Mr. Potter?

Mr. Potter: No. I understand.

Mr. Anderson: I call your Honor's attention to the fact that there are several obligations there. In the first place, there are appropriations authorized to be made for this company. Then there is a guarantee of the stock of the company, up to $12,000 a year.

The Special Master: I want to get the section under which this certificate was issued, so that I can have it before me when you are examining him.

Mr. McClintic: It could not very well be a guarantee of the stock.

Mr. Anderson: Of the dividend—12 per cent. for 12 years, and 15 per cent. forever thereafter.

The Special Master: The Act itself will disclose what the obligations were, of course.

(The pending question was read, as follows):

"Q. How do you know that certificate to which you refer, which was issued in 1820, was an obligation upon the part of the State of Virginia, either in substance or in form, directly or indirectly?"

A. Because it was funded by the State on the 12th day of November, 1873. 248

By Mr. Carlisle:

Q. Did you see that certificate at all?

A. No, sir.

Q. Do you know that that Act of 1873 refers to that certificate?

A. I don't know that there is an act of November 12, 1873. There is a funding transaction on the books of the second auditor which recites that that particular bond was refunded under that act.

Q. You see, you do not understand me. I am trying to get at the origin. I am trying to find out whether the certificates which you assumed was a debt of Virginia was at that time a debt of the State of Virginia—that is, when it was issued on the 17th of February, 1820, or whatever the date was.

The Special Master: No; July, 1820.

A. July 15, 1820.

By Mr. Carlisle:

Q. Did you look into it to see whether it was at that time a debt or a part of the debt of the State of Virginia?

A. This issue of bonds was referred to repeatedly in various reports, and it was mentioned on the books. It appears in the books of the Second Auditor's office as a part of the debt of the State of Virginia.

Q. Then you supposed that certificate was a bond, did you?

A. I made no assumption in regard to whether it was a bond or stock? 249

Q. You must have made some conclusion in regard to it?

A. I considered it as an obligation.

The Special Master: It is important to us to get exactly what the witness knows. The question is when you made your account and started with this item, whether you made any investigation of the original sources of information, so as to satisfy yourself as to what kind, if any, obligation, the State of Virginia was under in connection with the certificate. That was the point.

Mr. Carlisle: That is what I mean.

The Special Master: Did you make any investigation that enables you to state the kind of obligation the State of Virginia assumes in connection with this certificate, issued under these circumstances, and if you did, state what it was. If you did not, that settles it.

A. I did make such an investigation and satisfied myself that it was an obligation of the State of Virginia, but I can't state at this time from memory just the extent of my investigation.

The Special Master: Refresh your recollection, and be able to state that after recess. Give us the original sources of information from which you reached that conclusion as distinguished from the subsequent reports.

Mr. Carlisle: As I understand, he did not see this certificate.

The Special Master: What you want is what the witness did find, if he found anything, that did indicate any obligation on the part of Virginia as to this certificate. I rather infer that there may be more or less reference to the acts of the legislature in connection with this account from time to time, and I 250 would suggest—I do not know whether this suggestion is a wise one or otherwise—that it would be a good thing if we could all have duplicates of the particular acts and sections of the Acts to which these accounts relate, so that I may have them right here without looking all over a long act. I will then have the sections

upon which Virginia relies, for instance, and the sections, if any, upon which West Virginia relies, for ready reference. If I could have the acts of the legislature where I can look at them, while this examination is going on, it will help us. I hope counsel on either side will arrange about that. These things are undoubtedly familiar to you all, but they are not quite so familiar to me.

By Mr. Carlisle:

Q. Not having seen that certificate at all, as you testified, did you suppose it was a bond, or did you suppose it was a certificate of stock in the James River Company the interests and dividends on which you say were guaranteed? 251

A. I never considered that point very much. We called them certificates, but they are in the schedule of Bonds. I never considered whether they were stock or bonds. I considered them as an obligation because the term stock and bond was used rather interchangeably in those early days. They called all bonds State stock.

Q. Yes, I understand; but I am trying to ascertain whether you found any bonds there or any certificates of stock issued by the James River Company the dividends on which were guaranteed by the State. Did you examine the papers held by the Literary Fund.

A. I don't know.

Q. Did you look there for a certificate or bond or certificate of stock?

A. I don't know that this bond is in existence. It was refunded and placed on file with the Treasury, and a new stock issued.

The Special Master: Well, you did not find it?

The Witness: No, sir.

Mr. Carlisle: When we get the papers we will see what it was.

The Special Master: He says he did not find anything of the kind.

By Mr. Carlisle:

Q. You treated it as an obligation of the State debt?

A. Yes, sir; as a part of the State debt.

Q. And then you made your accounting because you thought that was the beginning of the debt of Virginia? 252

A. Because I thought what?

Q. Because you thought the issuing of that certificate, whatever it was, was the beginning of the creation of the public debt of the State of Virginia?

A. Yes, sir.

Q. That is what you thought?

A. Yes, sir.

Q. Now, if that was not any part of the public debt, then your accounting was erroneous?

A. If that was not the beginning, yes.

The Special Master: Are we to understand that the guarantee only related to the dividends—

Mr. Anderson: No, sir; as to both.

The Special Master: Both the principal sum and the interest on the principal sum?

Mr. Anderson: The State appropriated money indirectly to the extension of that improvement and also guaranteed 12 and 15 per cent dividend on the stock of the Company, and the State has paid enormous sums under that obligation from that time down? 253

The Special Master: From a hurried reading I doubt whether section 14 goes as far as you think, Mr. Anderson. You may be correct, however; I only read it hurriedly. There is a proviso at the end of the section that limits the liability to $12,000 per annum.

Mr. Anderson: That is it, sir.

The Special Master: Do you mean by that they were to pay $12,000 per annum of the income?

Mr. Anderson: No, the State to pay $12,000 per annum whether anything was earned by the Company or not.

The Special Master: And no more.

Mr. Anderson: But still that was an obligation equal to $200,000 capitalized.

Mr. Spooner: No. We will contend, and I think we will be able to demonstrate, that it was no obligation at all in the sense of being a State debt, and I rise merely to suggest that there are four acts. They are splendidly drawn, as all the acts in the early days of Virginia were splendidly drawn. They are somewhat complicated, and you cannot take a certain section or an extract from a single section, and solve the question by the light from that section or extract; and as long as it will be a concrete thing which we must discuss, I think it will tend to the better elucidation of it if we take the testimony as to what this witness did, and why he did it, and discuss later this question of law—for that is what it is.

The Special Master: That is quite agreeable to me.

Mr. Anderson: And satisfactory to us. 254

The Special Master: But in the meantime you will appreciate the importance of my having these various sections where I can see them and become familiar with them.

Mr. Spooner: And after recess we will have before you the various acts.

The Special Master: Typewritten copies?

Mr. Spooner: No, printed copies, and your attention will be drawn to various sections which touch the subject.

The Special Master: You may proceed with your cross-examination, Mr. Carlisle. Mr. Carlisle's purpose now, as I understand it, is to detail the facts, and get those on the record, and later we will have oportunity to discuss the legal questions.

[*Vol. 4. May 5, 1909. Cross examination of A. G. Potter.*]

By Mr. McClintic:

Q. I will now refer to Exhibit D-1, first page of Schedule 1— 362

Mr. Harrison: Beginning with item 4 of the decree?

Mr. McClintic: Yes.

Q. (Continuing). In these ordinary expenses, did you charge any buildings?

The Special Master: Money expended for the construction of buildings?

Mr. McClintic: That is what I mean, yes.

The Special Master: If so, what. I suppose that is what you mean?

Mr. McClintic: Yes; I was going to follow that up if he said there were any. I don't know whether there were any or not. I wanted to find out.

A. Excuse me a moment and I will see if I can answer positively. I find one item, penitentiary, enlarging, and repairs. Part of that was for building—enlarging the penitentiary. I do not recognize any other items in this account at the present time as covering buildings.

By Mr. McClintic:

Q. Do you know whether or not you did charge buildings?

A. I don't remember positively whether any buildings went into this account or not.

Q. Did you intend to charge buildings; do you remember whether you did or did not? If you absolutely did not, there is no use of going into it; but if you did, I would like to know what they are. 363

A. If you will allow me to look I can tell you in a moment. "Deaf, dumb and blind institution." That may have been for building.

Q. I will ask you another question. Where did you get these accounts?

The Special Master: Do you want him to finish his answer to

the other question? He was undertaking to ascertain whether the deaf, dumb and blind institution was for building.

A. (Continuing.) The item is under "Deaf, Dumb and Blind Institution, and I don't know whether it covers building or not.

The Special Master: You are not able to state.

The Witness: No, sir.

By Mr. McClintic:

Q. Where did you get these items from, mentioned in Schedule 1, Plaintiff's Exhibit D-1?

A. From the published reports of the auditor of public accounts.

Q. Did you analyze any of them to see what they were for?

The Special Master: We went over that this morning and he said he did not, and unless there is some change to be made—

The Witness: No; there is none.

By Mr. McClintic:

Q. The third item is "General Government, $8,495.63" (Plaintiff's Exhibit D-1, first page of Schedule 1). Can 364
you tell us what that means, what is it for?

A. I think it is in the nature of petty cash items not chargeable to other accounts, merely general expense items not otherwise classified.

Q. Expenses for what?

A. I don't know. Charged up under that heading in the annual reports, and we put them in under that heading.

Q. You have another item, "Pensions." Pensions for what?

A. I don't know. They may have been State employees, but I have no absolute knowledge as to what class of individuals they apply to.

Q. You have an item there called "Expenses of representation." Do you know what that means?

A. No, sir.

Q. "Public arsenals?" Do you know what that means?

A. Only in a general way. I know there was a guard maintained in Virginia at that time.

Q. I am not asking about the public guard; I am asking about the arsenal.

A. They had to have an arsenal, I presume, for taking care of the arms.

Q. You mean by an arsenal a building?

A. No; I don't know that it means that. I think it is the expense of maintaining an arsenal.

Q. Do you know that, or are you conjecturing? 365

A. I don't know it, no.

The Special Master: That is, do you know anything about it outside the entry you have made from the books?

The Witness: No; we have not gone back of the entry.

The Special Master: He said he did not go back on any one of them.

Mr. McClintic: Now, schedule 2—

The Special Master: In the same exhibit?

Mr. McClintic: The same exhibit.

Does the same answer apply to all those, that you took those from a book and did not look back as to the divisions of that?

The Special Master: In detail?

Mr. McClintic: In detail?

The Witness: Well, with respect to the expenses, mileage of the board, and expenses of inspection, we did analyze them, as I have explained in the preceding exhibit.

By Mr. McClintic:

Q. As to all the others, then?

A. Otherwise we did not make any further analysis than the books showed.

Q. On the next page. Schedule 3, you charge maps, $42,529,98. Did you analyze that account and get details?

A. No; those were charges appearing in the annual reports, as shown by the next number, under references, which means the references in the annual report.

The Special Master: How much of that did you charge for 20, 21 and 22 added together?

The Witness: $30,000.

By Mr. McClintic: 366

Q. Of the $42,000?

A. Of the $42,000.

Q. And the next item, "Surveys, Salaries and Expenses, $110,369.47," how did you arrive at that?

A. In the same manner, taking the items appearing in the board of public works annual reports.

Q. How much of that is charged in items 19, 20 and 21?

A. $7,373.81.

Q. I understood you to say that you excluded from these all the items you charged under 3 of the direct charges?

A. Yes, sir.

Mr. McClintic: If your Honor please, I cannot speak of the decree as No. 3. C-1 I believe it is.

Mr. Harrison: You mean item 3 of the decree?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. On schedule 4 there are certain items amounting to $891,435.66, called the literary fund disbursements. Where did you get those, as to detail or not?

A. From an analysis of the Literary Fund books—journals and ledgers.

Q. You analyzed those books?

A. Yes, sir. We had no published reports of that and were compelled to go back to the books.

The Special Master: So you went back to the original items? 367

The Witness: Yes, sir.

Q. Hampden-Sidney College, at the bottom of the page, $25,000. What was the nature of that expense?

A. I don't know. It was merely a payment to the college as shown by the books, but for what purpose I don't know.

Q. Do not the books further show an investment in land and buildings up there?

A. I cannot say at this time.

Q. There is an item there, medical college, $5,000. What is that for?

A. I don't know.

Q. I thought you said you analyzed these expenses.

A. We analyzed them and found the charge and the payments to the medical college.

Q. What medical college?

A. I cannot say offhand. I don't know whether it is connected with the University of Virginia or not.

Mr. Anderson: It was connected with Hampden-Sidney, and I suppose it was $25,000 for building it, although I don't know. The State owns it.

Mr. Carlisle: Does the State own it?

Mr. Anderson: Yes; and still makes an appropriation for it.

By Mr. McClintic:

Q. Was that the only appropriation ever made for it, the $25,000?

A. I think it was during that period, yes.

Q. Up to 1861? 368

A. Yes.

Q. You charged next there an item "Davis' book on criminal law, $12,000." Was that item put in there at your volition or upon direction of counsel?

A. I did not ask counsel about it.

The Special Master: What is the basis of it?

The Witness: The cost of publishing that or purchasing a supply of them.

The Special Master: Was the State buying the book or publishing it?

The Witness: I could not tell you.

The Special Master: That is, did the State own the copyright, or was it simply buying a number of copies?

Mr. McClintic: He says he does not know.

The Special Master: Then that exhausts that.

By Mr. McClintic:

Q. Is the buying of a book on criminal law in your opinion an ordinary expense of goverment?

A. The buying of it is not. If it was bought for distribution among the State officials, then it would be such an expense.

Q. Was it done or not. The witness is going on to suppose a certain state of facts?

Mr. Harrison: No; you asked him for his opinion and he is giving it and now you say you don't want it.

Mr. McClintic: I want him to answer the question, but I do not want it on a supposed state of facts.

The Special Master: Mr. McClintic's question is whether on the facts that came to his knowledge this is an item that is properly charged to ordinary expenses.

(The stenographer repeated the last question of Mr. 369
McClintic and the answer thereto as above recorded, on request.)

The Witness: It would depend entirely on the purpose for which it was bought.

By Mr. McClintic:

Q. What has the literary fund got to do with the sale of slaves and expenses of free negroes, an item of $827.73?

A. All I know about it is I found the item on the book. "Expenses in connection with the sale of slaves and free negroes."

Q. You find charged here as an ordinary expenses, "State claims against the United States," $2,722.82. What is that for?

A. Expenses in connection with the collection of State claims. My recollection is that the Literary Fund had the handling of some of those claims and it cost that much to collect them.

Q. Did you find that from the books?

A. Yes, sir.

Q. Was the same taken out of the amount collected?

A. I don't know.

Q. What does the book show on that?

A. I cannot tell you offhand. I have it among my papers. It was an original entry of expense and we so considered it. 370

Q. Did you consider every item of expense that the State went to for any purpose, shape or form, an ordinary expense—every expenditure of money?

A. Any expense that did not appear to be an extraordinary expense I would call an ordinary expense of government.

Q. Will you kindly define the distinction between ordinary and extraordinary?

A. I merely use that word in the sense that it would be used in connection with any business. It we had a fire and burned the house down, it would be an extraordinary expense. I did not run across any item of that kind. Others I would consider ordinary expenses.

Q. Would the building of this building be an ordinary or extraordinary expense?

The Special Master: Do you mean this building where we are now sitting?

Mr. McClintic: Yes, sir.

A. I would rather not pass an opinion on that.

By Mr. McClintic:

Q. Well, is the building of an asylum at Williamsburg an ordinary expense or an extraordinary expense?

A. I think an ordinary expense if the lunatics of the State need it.

Q. Then when it is built in West Virginia it is an extraordinary expense and when it is built in Virginia it is an ordinary expense?

A. I don't think there is anything of that nature in here.

Q. Haven't you an item of that kind charged? 371

A. No, I think not.

Q. They have built buildings out of this fund, which you have charged as ordinary expenses, have they not?

A. We would probably have to have the reports from the asylums to determine what they have spent it for.

Q. You made no attempt to analyze that?

A. No, sir.

Q. You have an item here "Taxes on salaries, $217.23." What is that?

A. The literary fund paid the salaries of the employees, clerk and bookkeeper, and charged those salaries to expenses.

Q. You mean the State of Virginia?

A. The State of Virginia.

Q. Taxes on the salaries of their employees?

A. Yes, sir.

The Special Master: An income tax?

The Witness: I don't know. And the board of public works did the same thing.

The Special Master: It was practically an addition to the salaries of the employees?

The Witness: Yes; sort of a special compensation.

By the Special Master:

Q. I do not quite understand this item about State claims against the United States. Do you know anything about that except what you find on the books, as to how it comes about and what the basis of it is?

A. What is that item? 372

Q. State claims against the United States, $2,722.82. How does that happen to be an item of charge?

A. I stated that the Literary fund held some of those claims that possibly had been assigned to them; or at least they held them, and it cost $2,700 to collect the claims.

Q. That was for the collection of these claims against the United States?

A. Yes; I think that is the explanation.

Q. What was the nature of these claims?

A. I think they were Revolutionary, half-pay claims. The Government paid for soldiers' half pay.

Q. And the literary fund took the claims and prosecuted the claims against the United States?

A. Yes, sir.

Q. And this item got in in that way?

A. Yes.

By Mr. McClintic:

Q. You have an item here "Expenses account of purchase of stock by J. Bauer." $902.23.

A. I think Mr. Bauer was commissioned to go to New York or Philadelphia and buy some bonds for the Literary Fund and his expenses on that trip or trips amounted to that much.

Q. You have here commission on United States debt, $4,199.92.

A. I cannot tell you offhand what that is. It appears in the Literary fund books as an expense. 373

The Special Master: And under that head, I suppose?

The Witness: I believe so, yes.

By Mr. McClintic:

Q. You have here "Judgments and commissions on escheats, delinquent and redeemed lands, $26,029.48." What does that mean?

A. I think it is an expense of the Literary Fund for that department in getting judgments in connection with delinquent and redeemed lands.

Q. Did they not get the money that came from those 374
things?

A. I think probably they did; yes. I am not entirely clear as to the make up of that item. I could explain it later.

Q. Was not that proper against the money collected, like the other items were?

A. I don't know that it was.

Q. What was that University of Virginia, $649,874?

A. I think it was an annual appropriation to the University, with such other sums as were appropriated by special act during that period.

The Special Master: The Act gave all the appropriations for the forty years?

A. Yes, sir.

By Mr. McClintic:

Q. You have just below that, put Deaf, Dumb and Blind Institute, $40,821.02. Are there any buildings in that?

A. I don't know.

Q. Did you analyze it any further than the total?

A. We took the figures from the data on the books, and I don't know whether it covers buildings or not. I will have to look at the books to tell. I have the information among my papers.

Q. Please look and see by to-morrow. What is the item Virginia Military Institute, $28,500?

A. I believe it is the same as the appropriations to the University of Virginia.

Q. Do you mean an annual appropriation of so much?

A. Various items appropriated for the suppoprt or equipment.
or other purposes of the Virginia Military Institute? 375

Q. Do you mean that they were appropriated occasionally, a certain amount, or was it all appropriated in one sum, divided in the forty year period?

A. I can't tell you that offhand.

Q. On schedule 9, the last page of this exhibit, is an item "Interest on James River and Kanawha Guaranteed Bonds paid by Treasurer of the Commonwealth, $617,502.46."

Mr. Carlisle: Is there any date to that?

Mr. McClintic: That is the whole for the period. No date is given.

By Mr. McClintic:

What period does that cover?

A. I don't know. I can't tell you from these figures.

By Mr. Spooner:

Q. Have you any memoranda by which you can tell when that began?

A. Yes, sir.

Q. And what period it covers?

A. Yes; I can get that if you wish.

Mr. Spooner: Yes, do that.

By the Special Master:

Q. The time when it ended and when it began.

A. Beginning with the year 1843 and ending in December, 1860.

Q. It began when?

A. In 1843.

Q. And ended when?

A. In December, 1860. The last payment was in December, 376
1860.

By Mr. McClintic:

Q. Was not all that interest converted into stock of the James River and Kanawha Company by the Act of Assembly of the State of Virginia, and the acquiescence of the Company, and received by Virginia?

A. I don't know.

Q. Did not the Act of March 23, 1860, provide for that?

A. I am not familiar with that Act of March 23, 1860.

Mr. McClintic: I believe that is all, your Honor, on section 4.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: If your Honor please, we now desire to offer Defendant's Exhibit D-1.

The Special Master: Very well. 537

(The paper referred to is filed herewith, marked "Defendant's Exhibit D-1.") 538

Mr. McClintic: On the bottom of page 5 of that exhibit there is an item marked "Primary Schools, out of income $2,400,331.11. We desire to withdraw that item from this exhibit as a part of the ordinary expenses of Virginia, for the reason to give notice to the other side— that this literary fund out of which this income was

derived was a fund already accumulated before the beginning of either period, either their period or our period in this case, and this expenditure was made alone, as I understand it, out of the income or interest which arose from the investment of that fund, which belonged to the State of Virginia before 1819, and was not paid out of money raised either by bonds or by taxes, or in any other way, during the period, but was wholly raised out of this income or from the investment of this literary fund.

The Special Master: Well, it came from assets accumulated anterior to the period in controversy, and has no relation to either indebtedness or taxation during the period, or since?

Mr. McClintic: And the fund was kept by the State of Virginia at the end of the period.

The Special Master: Do they have any parallel item in their schedule?

Mr. McClintic: They charge that item under the head of $863,000 of direct expenditures which arose from that fund.

The Special Master: That $863,000 is a part of the $2,400,000?

Mr. McClintic: Yes, sir. We put it under one head, and they put it under another. We now desire to withdraw it 539
from this heading, and claim no part of it. It is a question of law rather than fact, as I understand it.

Mr. Spooner: We object to this being included in the other.

The Special Master: Yes; but I know from him, of course, the relation of one item to the other.

Mr. Anderson: If your honor please, we of course make no objection to counsel on the other side withdrawing this item from the statement, but—

The Special Master: I understand you have no objection to their withdrawing the item, but you do not waive any rights you have in relation thereto.

Mr. Anderson: But we do not concede the statement of fact made by the other side. The literary fund is a continually growing fund in Virginia, all fines and escheats going to it.

The Special Master: If there is any question of fact involved about the literary fund, that of course will raise an issue between you.

The Special Master: So I understand the item of $2,400,331.11 is withdrawn?

Mr. McClintic: Yes, sir.

The Special Master: It is not objected to by the counsel for the State of Virginia, although the State of Virginia does not waive any rights it may have in that regard.

Mr. Anderson: We do not concede the statement of fact or
the proposition of law either. 540

Mr. McClintic: We will present that here to your Honor, before the case is closed, through a supplementary statement.

The Special Master: Certainly. This seems to leave West Virginia in the position she would have been in if she had not included the item, and it does not preclude the rights of either party in connection with this exhibit.

Mr. McClintic: No, sir.

The Special Master: You may proceed with the examination.

By Mr. McClintic:

Q. Take Exhibit D-1, Mr. Dixey, and state to the Court if that was made up under your supervision?

A. That was made up my supervision and direction, and signed by me.

Mr. McClintic: I would state, for the further information of the Commissioner, that the withdrawal of that item will necessitate our later making a new proportion to go in the front of this paper.

The Special Master: Precisely. In other words, you desire to file a supplementary statement to defendant's exhibit D-1, a restatement of the statement?

Mr. McClintic: A restatement of the proportion.

The Special Master: In order to harmonize with the items you withdraw?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Is this statement, Mr. Dixey, a correct one, including 541
the item as it stands before we withdrew this $2,400,000 item?

A. It is a correct statement of the amounts of such expenses as are included in it—such disbursements and expenditures as are included in it.

Q. The proportion on page 2—

The Special Master: It is made up from information derived from books of original entry?

A. Books of original entry; yes, sir.

By Mr. McClintic:

Q. As I understood you, all the information and all the exhibits so far filed have been derived from books of original entry in each and every instance?

A. Yes, sir.

The Special Master: Yes.

By Mr. McClintic:

Q. The proportion on page 2 was made by you, was it?

A. Yes, sir.

Q. And is correct on the face of it, as it then stood?

A. Yes, sir; it has been verified.

Q. And likewise the proportion on page 3?

A. The percentages on page 3 were made by me. With the exception of the $620,029, that is, the average of the population without slaves for Virginia, and the averages with and without slaves for West Virginia, everything else on that sheet was furnished by the United States Census Bureau.

542

By the Special Master:

Q. Did you make any revision of their computation?

A. I checked their computations. Those are simply averages.

Q. My question is whether you recomputed, so as to see whether the computations made in the Census Bureau were accurate or not?

A. Yes, sir.

Q. That is what you mean by checking?

A. I have their original letter here.

Q. When you say you checked their computation, you mean you compared your computations with theirs?

A. Yes, sir; I verified them.

Q. And found theirs correct?

A. Yes, sir; I found their computations correct. Of course the figures as they gave them I accepted as being correct. That is, the Census of 1820, for instance, as they give it, I accepted as being correct. Their totals and their divisions I verified.

Q. In other words, you did not go back to the Census yourself just for the purpose of ascertaining whether the total was correct?

A. I did not. Their letter states that it is an extract from the United States Census, and the letter is signed by Mr. North.

By Mr. McClintic:

Q. On pages 4, 5 and 6 of this Exhibit, Mr. Dixey, we find various items and various figures. Were those all examined by you?

A. As to totals; yes, sir. 543

Q. Under whose direction or by what direction did you put these various items in this exhibit?

A. By direction of counsel for West Virginia.

Q. As to the details making up each of these totals, I understood you to say you personally did not originally make them?

A. I did not examine every item; no, sir. If there was any question of policy or application, such matters were examined and passed on by me, but I made no attempt whatever to examine every item in the routine work of analysis.

By the Special Master:

Q. That is, you passed upon items as to which the application was not obvious?

A. Yes, sir; when there was any question in the mind of the gentleman who was in direct charge of the work.

By Mr. McClintic:

Q. Were any buildings which were erected in what is now the State of Virginia included in this exhibit?

A. In this exhibit?

Q. Yes; defendant's exhibit D-1?

A. There are no buildings; no, sir.

Q. No buildings were included?

A. No, sir.

Q. Were any purchases of land in what is now the State of Virginia included in this?

A. No, sir; there are no purchases of land. I may qualify that by saying that there are repairs to buildings included within it.

Mr. Spooner: That is different.

A. But no original investments. 544

The Special Master: No original construction?

A. No original construction.

By Mr. McClintic:

Q. Mr. Dixey, on plaintiff's Exhibit D-1—have you a copy of that there?

A. I haven't it here, Mr. McClintic.

Mr. Anderson: I will lend him mine, gentlemen.

The Special Master: What page?

Mr. McClintic: Page 4.

By Mr. McClintic:

Q. Are you familiar with the items on this schedule 1, page 4, of plaintiff's Exhibit D-4, which were not allowed by your exhibit? For instance, the third and fourth items, general government and pensions. Did you personally examine as to what those were for?

A. I don't find it here, Mr. McClintic.

Q. It is on page 4 of the whole exhibit, as marked here, schedule 1, entitled "Commonwealth of Virginia vs. State of West Virginia, analysis general expenses of Government, summary." Look on the preceding page.

A. I have it.

Mr. Anderson: It is headed "Schedule 1."

The Special Master: Page 4 is a continuation of page 3. What is the question, Mr. McClintic?

Mr. McClintic: I ask him whether he knows personally the details of the third and fourth items sufficiently to explain to the Court what they were for? 545

The Special Master: The third and fourth items on page 4?

Mr. McClintic: Yes.

The Special Master: That is transportation of free persons of color.

Mr. McClintic: No; General Government and Pensions is the one.

The Witness: It is on page 3 in my statement here.

Mr. McClintic: This was paged for us by the gentlemen on the other side.

The Special Master: What page are you looking at?

Mr. McClintic: Page 4 of Exhibit D-1.

The Special Master: What item have you in mind?

Mr. McClintic: The items General Government and Pensions.

The Special Master: That is on page 3 of my copy.

Mr. McClintic: It is page 4 here.

The Special Master: Let me have that repaged right now. You follow my paging. I have got to have some opportunity to work this out myself. The first page of Exhibit D-1 is page 1. Have you that, Mr. McClintic?

Mr. McClintic: Yes, sir.

The Special Master: Page 2 is headed "Commonwealth of Virginia vs. State of West Virginia, ordinary expenses of government. Article 4." Make that page 2. Now, page three is headed, "Summary, analysis of general expenses, Schedule 1." Page 4 is a continuation of it. Page 5 is headed "Schedule S." Page 6 is headed "Schedule 2." Page 7 is headed Schedule 3. Page 8 is headed Schedule 4. Page 9 is headed Schedule 9. Are you 546 correct now?

Mr. McClintic: Yes, sir. Mr. Potter's assistant paged this, and I did not know anything about it except what I found here.

Mr. Anderson: It is just accidental. There was a leaf put there. That is the reason for that.

The Special Master: There must not be any additional leaves put anywhere unless they are put into all the copies. I cannot allow confusion in this. Now, take your item, Mr. McClintic—General Government, $8,495.63. What is the inquiry?

By Mr. McClintic:

Q. Do you know what that means, what it is for?

A. Do I know what it means and what it is for?

Q. Yes.

A. As to the details?

Q. Yes.

A. I am not familiar with all the details.

Mr. McClintic: We will examine Mr. Scoville on that question later on.

The Special Master: All right.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

By Mr. Harrison:

Q. Now, Mr. Dixey, we will go to item 4 of the decree.

The Special Master: That is Defendant's Exhibit D-1?

Mr. Harrison: Yes, sir. The paragraph of the decree requires an ascertainment of such proportion of the ordinary expenses of the Government of Virginia, since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia, on the basis of the *average* total population with and without slaves, as shown by the Census of the United States. Will you please look at your exhibit D-1 and the plaintiff's exhibit D-1, and state the difference in the totals 647 arrived at respectively by the two accounts.

The Special Master: You want to get the totals in each exhibit?

Mr. Harrison: Yes; the totals in each exhibit.

The Special Master: Are they not found on page 6 of Defendant's Exhibit D-1, and on page 2 of the Plaintiff's Exhibit D-1?

Mr. Harrison: I believe they are. Yes, sir; that is right.

A. The total on plaintiff's Exhibit D-1, page 2, is $40,023,287.79, and on Defendant's Exhibit D-1, page 6, $20,638,825.13, an excess on the plaintiff's Exhibit of $19,384,462.66.

By Mr. Harrison:

Q. How is that difference accounted for?

A. It is accounted for by items included in the plaintiff's exhibit, which are not included in the defendant's exhibit.

The Special Master: The principal of which is interest on public debt, $18,024,358.52. Is that right?

A. That is the largest individual item, and practically a very large percentage of the difference.

By Mr. Harrison:

Q. The largest item is that the plaintiff's exhibit includes interest on the public debt, amounting over $18,000,000?

A. Yes.

Q. The rest of it is accounted for how, in the period from 648
which you started to reckon the accounting?

A. Partly that; yes, and by the exclusion of some other items from our account.

Q. Well, they would be more or less negligible, would they not? The other items you speak of, the two larger items, I imagine, would be the interest on the public debt and the difference in the period of time from which the record commenced.

Mr. McClintic: And there are items which you have included in yours which we do not admit to be an ordinary expense, and we include some in ours which you have not in yours.

Mr. Harrison: They could not be very material, because the major portion of this difference is covered by the interest on the public debt.

A. The difference is both ways.

Mr. McClintic: There are a great many in yours that are cut out of ours.

The Witness: The actual difference is larger than the balance.

The Special Master: I will ask counsel for the plaintiff this. Do these items of interest rendered here on page 2 of Plaintiff's Exhibit D-1 represent amounts of interest actually paid during the period, or are they computations?

Mr. Anderson: They were actually paid.

The Special Master: The $18,024,358 is shown by the books to have been actually paid by the State during the period?

Mr. Anderson: Yes, sir; actually paid. 649

The Special Master: And so as to all the other items?

Mr. Anderson: Yes, sir.

By Mr. Harrison:

Q. Was not something said yesterday or this morning about your striking out from your exhibit, D-1, an item of over $2,000,000 on account of primary schools?

A. Yes: that was struck out, but that is not a difference as appears in the figures that I have given you. I assumed that you wished me to handle this in the same way I handled the other.

Q. What do you propose to do with that item if you strike it out? Are you going to include it anywhere else?

A. Counsel will tell you that.

Q. You will have to refer me to counsel about that?

A. I will have to refer you to counsel; yes, sir.

The Special Master: You give the result and it is up to the attorneys to discuss it. Is that your position, Mr. Dixey?

A. Yes, sir.

By Mr. Harrison:

Q. When you undertake to ascertain the just proportions of those items of ordinary expenses on the basis of the *average* total population of Virginia, please explain the method which you pursued.

A. I took the census of the United States, as shown by its records, from 1820 to 1860 by decades. 650

Q. By decades?

A. By decades, and added them together and divided them by five, there being five censuses in the period, to determine the average census.

By the Special Master:

Q. That is, by decades covering the period covered by the account?

A. Yes, sir; and then determined the proportion of Virginia's average census to the total of both States, or to the whole entire State, and the proportion of the West Virginia Census to the population of the entire State.

Q. That method is set out in detail on page 3 in Defendant's Exhibit D-1?

A. Yes, sir; and I applied those percentages to the entire amount of the ordinary expenses, as shown by the schedule.

Q. Defendant's Exhibit D-1, page 3, shows the details of that computation?

A. Yes, sir; that information was furnished us by the United States Census Bureau. I have the letter of the director, giving those statements.

By Mr. Harrison:

Q. Does your statement show the percentage of the whole on the basis of both total population and white population exclusive of slaves?

A. Yes, sir; you will find the percentage on page 3, Mr. Harrison.

By Mr. Anderson: 651

Q. You estimate it on the basis of the total average population for the five decades?

A. As called for by that section of the decree.

Q. As you understood it?

A. Yes, sir; it shows the average total population as shown by the Census of the United States, with and without slaves.

Q. The question was whether that meant the average for the period of forty years, or the average so as to strike the period of June 20, 1863.

The Special Master: The question is whether the term "average" relates to the period over which the accounts were running?

Mr. Anderson: Yes, sir.

The Special Master: That is, whether you would have the parallel of average with the parallel of accounts. In point of time, are they both coterminus; have they the beginning and ending at the same time?

Mr. Anderson: That is very likely what is meant—to average each decade.

Mr. McClintic: We will have to make a supplemental statement, then, by reason of taking out the $2,400,000, as I said this morning.

The Special Master: I understand that. That simply throws the amount out of joint. Is that all you want to ask him about this?

Mr. Harrison: I think so.

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[*Vol. 6. May 7, 1909. Direct Examination C. E. Scoville.*]

By Mr. McClintic:

Q. Mr. Scoville, on page 3 of plaintiff's exhibit D-1, there is charged what is termed an analysis of general expenses of government, and there is the word "summary" under that.

Mr. McClintic: If your Honor please, I would like to make a statement to make myself clear as to what I want in there. I want to call it to the special attention of the Master, in view of what you said. There is a very large number of items which they have marked apparently on here as ordinary expenses of government, and it is necessary in some way to get the matter into the record, so as to show to you what each of those items is, in order that you may see whether or no it is pertinent to the words "ordinary expenses." I am not wholly advised as to the best method by which that can be done. The only method I know of is to examine Mr. Scoville, who has examined them, and let him state what they are, unless your Honor can suggest some better way.

The Special Master: Do you object to them all?

Mr. McClintic: No; not to all on that page, but a great
many I object to, and the difficulty lies in the fact that the 749
mere word there does not explain anything.

The Special Master: Do you object to the classification? For instance, do you object to the general assembly item as being an ordinary expense?

Mr. McClintic: No, sir; not inherently.

The Special Master: But you have objection to some of the items that make up that aggregate?

Mr. McClintic: No, not as far as I know of; not anything on general assembly.

The Special Master: I was using that for an illustration. That is all. I do not know that you can make any better progress than to take each item, unless he could prepare a statement in detail in relation to all these items, and then later on have that submitted. How long would it take him to go through with this?

Mr. McClintic: It would take some little time. I don't know how long.

Mr. Spooner: It is an important matter.

The Special Master: Yes; certainly. We are only discussing the question as to the most feasible way of getting it in. Has he his details all prepared?

Mr. McClintic: No; it is a question not of figures, but of information as to what the figures mean. In other words, take the words "general government," the third item there, $8,495.63. That does not mean anything to your mind unless you know what it is.

Mr. Spooner: It has to be proven by testimony. It cannot be proven by exhibit.

The Special Master: I guess you had better take it and go along with it, item by item.

By Mr. McClintic:

Q. State, Mr. Scoville, if you know, to what the third 750
item under "general government," $8,495.63 refers, and what it is.

The Special Master: What expense it is. What character of expense.

A. In that account there was charged the expenses of the War of 1814 as recorded on the books, and not what might be termed current expenses during our period.

The Special Master: Do I understand that the whole item $8,495.63 is predicated upon the expenses of the War of 1814?

A. Yes, sir.

The Special Master: Now go right along with the next item.

By Mr. McClintic:

Q. The next item is pensions, $88,548.74.

Mr. Harrison: What is his authority for the statement he made just now?

Mr. McClintic: The original entries on the books.

Mr. Harrison: Did you find $8,495.63?

The Witness: I am not attempting to testify as to the exact amount, but the character of items that are included under that caption.

By the Special Master:

Q. Did you find an account on the books denominated "general government?"

A. Yes, sir.

Q. Then you ran that account down to the items of which it was composed?

A. Exactly. 751

Q. And found this result to which you testified?

A. Those items are for war expenses for the War of 1814.

Mr. Conrad: 1812.

Mr. Hogg: It is sometimes called 1814 and sometimes 1812.

Mr. McClintic: We all know what he means.

By Mr. McClintic:

Q. The next item, Mr. Scoville, is pensions, $88,548.74. Tell the court if you know what that is for; if you have been able to find out?

A. The books of original entry and all of the records which we had access to, and searched, did not disclose just what pensions those were, but the original entries for each individual disbursement do record them as payments for pensions; but whether they are Revolutionary War pensions or Government Employe pensions is not shown as far as I can find.

The Special Master: Or 1812 pensions?

The Witness: No sir.

Mr. Spooner. Is there no legislation that shows?

The Witness: I could not find any information.

Mr. Anderson: About what years was that; do you recall?

The Witness: That runs through the entire period, payments every year.

The Special Master: There must have been some statute under which those pensions were conferred. However, he did not find anything.

By Mr. McClintic:

Q. On the same page, farther down, we find the words 752
"expenses of representation." $24,120.17. Will you please explain if you know what that is?

A. Those are election expenses for representatives in Congress.

Q. What is that; election expenses for representatives in Congress?

A. Yes, sir; comparing polls, etc.

Mr. Anderson: Expenses of Federal elections?

The Special Master: The regular biennial expenses involved in Congressional elections?

The Witness: They are regular expenses; yes, sir.

The Special Master: Regular biennial Congressional expenses; that is, expenses in Congressional elections?

The Witness: I won't say biennial. They occur regularly.

Mr. Harrison: They run all the way during the period?

The Witness: Yes, sir.

The Special Master: You say they do run all the way during the period?

The Witness: Yes, sir.

The Special Master: What do they consist of?

Mr. Anderson: They are in both accounts, are they not?

Mr. McClintic: Yes, sir. I thought they were not. That is the reason I asked the question.

The Special Master: Then there is no controversy over 753 that.

Q. The next charge is "public arsenals," $96,709.63.

A. The charges to that account are included in Defendant's Exhibit D-1.

Q. Under the head of "military establishment?"

A. Yes, sir.

The Special Master: Do they aggregate the same?

The Witness: No, sir; they do not, for one reason, on account of the difference in the period.

Mr. Harrison: They run from 1820.

The Special Master: Yes; I understand. You cover three years and four months more than they do.

By Mr. McClintic:

Q. Do you find the item of "warrants on account" and "general appropriations?"

By Mr. Spooner:

Q. Are those expenses recurring expenses from year to year?

A. The arsenal expenses?

Q. Yes.

A. Yes, sir; we include those in our statement of ordinary expenses.

By Mr. McClintic:

Q. Take that next item, "warrants on account" and "general appropriations," $746,087.72. What is that?

A. That account includes a varied class of expenditures, and does not appear in any of our exhibits, because we analyzed all expenditures which were grouped under that head, and applied them to the proper individual accounts to which they were chargeable.

By Mr. Harrison:

Q. Do they not appear in the books of the Commonwealth under that head? 754

A. There is such an account; yes.

Q. You disregarded it, though.

A. We did not disregard it. We analyzed it and found what was in the account, and applied it to the proper accounts.

By the Special Master:

Q. In so doing, did you take all the items included in the original account and apportion them to some account, or did you leave some unaccounted for, undistributed? That is, when you got through with your analysis of that account, had you attributed to some account that you made up all the items contained in that account?

A. We did, with the exception of a small amount of about $11,000, which we called miscellaneous expenditures, and a part of that came from those warrants on account.

Q. Did you have an item of miscellaneous expenditures?

A. We have on our exhibit, under ordinary expenses, an item of miscellaneous expenditures, which we explained by saying that there are other unclassified expenses.

Q. And in that item you included the $12,000?

A. Yes, sir; part of which came from these warrants on account.

Q. So that everything included in that account is distributed in some other accounts you have made?

A. Unless it has been excluded under instructions from counsel. 755

Mr. Harrison: Has that been done?

The Special Master: Has anything been excluded? That is what we want to get at.

Mr. Harrison: Whether anything has been excluded is what we want to find out.

The Special Master: If the whole item is accounted for in some of the various accounts you have made, as the result of your analysis, that takes care of it. On the other hand, if there is anything unaccounted for, what is unaccounted for and what is it?

A. I cannot tell that without referring to some of our detailed papers. I think it is safe to say some were excluded.

Mr. Harrison: How much was it?

The Witness: I cannot tell right here how much it was, but our papers will disclose that.

The Special Master: Make a statement of that, so the other side will have an opportunity to criticise it.

Mr. McClintic: The other side did not give us any details so that we could criticise. We had to take everything there was. They

are the plaintiffs, and they are making up this statement that we could not do anything with except by taking it as it was.

Mr. Harrison: You ought to have analyzed the accounts yourselves.

The Special Master: Of course they rest on their general 756
statement, and if you are able to successfully attack any part of it, or appear to, it is open to them to reply as best they can. There is no question about that. What is your next item.

By Mr. McClintic:

Q. "Slaves transported and executed," $611,351.23. Please explain that, Mr. Scoville.

A. The account "slaves transported and executed" covers the amount paid by the State for slaves executed and transported. Under the laws of Virginia if a slave was executed or transported, the owner of that slave was paid an appraised value, and in this account to which we are referring were included expenditures on that account.

The Special Master: What is meant by "transported?"

The Witness: Transported beyond the limits of the United States.

The Special Master: He was exported at the time he was transported?

The Witness: There is a credit against that account for slaves sold.

Mr. Harrison: Has the witness answered whether that item appears on the corresponding schedule of West Virginia—$611,351.23?

Mr. McClintic: I did not ask him that, but I think it does.

The Special Master: No: he did not ask him that. What is the fact about that?

The Witness: It does not appear in our exhibit.

Mr. Harrison: Why not?

Mr. McClintic: I expect it is because counsel told him 757
otherwise.

The Witness: I just thinking how to frame that. That is the fact. Under instructions from counsel, that item was omitted.

By Mr. McClintic:

Q. The next item is "gun carriages," $14,317.05. Is that included in your exhibit?

A. We include that in Defendant's Exhibit D-1, under "transportation of arms." Gun carriages in that account means the carriage of guns. Transportation of arms is the proper title, we think, for it.

Q. Yes; I should think that would be better than "gun carriages."

A. It does not mean the carriages the guns were carried on.

Mr. Anderson: It means transportation of guns, does it not?

The Special Master: He has explained that item. He says it means the carriage of guns.

Mr. Conrad: The State had an armory here and one at Lexington, and it may be that arms were transported.

By Mr. McClintic:

Q. There is an item below there "revision of laws," $4,500. Do you know what that is?

By Mr. Harrison:

Q. What item in your accounts did you say that gun carriage item appeared?

A. Defendant's Exhibit D-1, page 5; under "military establishment, transportation of arms."

By the Special Master:

Q. It makes up another larger item?

A. Yes, sir.

Q. It is not by itself? 758

A. No, sir.

Mr. McClintic: It is detailed to itself. It shows what it is. It is detailed under the account "military establishment."

The Special Master: But this is $14,307.05. You have it $12,160.08.

Mr. McClintic: There is hardly a single item that agrees, even when you have to take the same item on account of this period. They all disagree. Under this head everything disagrees.

The Witness: I cannot say just where the charge there for "revisions of laws" appeared in our own accounts, if it appears at all. It does not appear under that caption.

By Mr. McClintic:

Q. Do you know what it refers to?

A. I do not.

Q. Do you find anything in the books of original entry to show under which it comes?

A. No, sir; there is no account of that caption.

Q. The next is a small item of $71.10, for seines. Do you know what that is?

A. I am under the impression that that is prior to March 19, 1823, and that it is a refund.

Q. The next item is "public warehouses," $35,722.00.

A. To that account there was charged the expenses of the

Warehouse Commissioners, and it is a proper reduction 759
from receipts from warehouses.

Q. But there is no corresponding item in your account?

A. On Defendant's Exhibit D-1, page 6, we show a credit to West Virginia of $389,694.91 for an item called "inspectors of tobacco," and from that amount the expense of Commissioners is deducted.

The Special Master: On page 6 you have that, have you?

A. Yes; under "less the following receipts."

By Mr. McClintic:

Q. The next item is "tobacco sales." $454.91.

Mr. Harrison: What is the difference between that item on your account and the plaintiff's corresponding account?

A. I suppose it is on account of the difference in the period. The difference is not very large.

The Special Master: The aggregate in the Plaintiff's Exhibit is $35,722.00, and the total credit you give is $36,570.00, which is more, but that includes the other item.

A. That includes two other items.

The Special Master: The $23,626.96 is a corresponding item?

Mr. McClintic: Yes.

The Special Master: What is your next item, Mr. McClintic?

By Mr. McClintic:

Q. Take the item "Tobacco sales $454.91." Do you know 760
what that is, Mr. Scoville?

A. I am not familiar with that expenditure.

Mr. McClintic: Is that in your account, General Anderson?

Mr. Anderson: Yes, sir.

Mr. Harrison: It is, yes.

Mr. McClintic: What do you mean by that?

Mr. Harrison: I could not explain that.

Mr. Anderson: I suppose it means sales at warehouses.

Mr. Harrison: The State had something to do with the sale of tobacco, in the way of inspection and commission and all that.

The Witness: I think that item is for the payment of burnt tobacco at the warehouses. That accounts for its being an expenditure. The title here, "Tobacco sales," under expenditures is not quite clear.

The Special Master: You allow $2,639.30 for burnt tobacco?

The Witness: Yes, sir.

The Special Master: Is that a corresponding item?

The Witness: That comes in another item further on, the first report here in the Plaintiff's Exhibit.

By Mr. McClintic:

Q. You have, next, "Armory, manufactory and repairs of arms, $243,015.60. Have you any corresponding item to that?

A. That is in Defendant's Exhibit D-1, page 5, under mili- 761
tary establishment; repairs of arms is the last item, and the manufacture of arms is the fourth item under military establishment.

Mr. Anderson: Transportation of arms?

The Witness: No.

Mr. McClintic: Armory and manufacture and repairs of arms. Is there anything included by the plaintiff in there for anything of that character, or do you remember about that?

The Witness: I think not in connection with that.

Mr. McClintic: The next item is "Sale of slaves, $99.26."

Mr. Anderson: The armory was built long before 1820.

By Mr. McClintic:

Q. The next item is "Sale of Slaves, $99.26. Do you know what that is?

A. No; I do not.

Q. The next item I refer to is Revolutionary claims agent, $3,861.67. Have you any knowledge of that?

A. That expenditure is for commissions of the agents.

Q. Collecting revenues.

A. Yes, sir; from the United States Government.

Q. The next item is "administrators of J. Merryweather and R. Graves, $11,067.33." Do you know anything about that.

A. We do not include any such item and I don't know what that is.

By Mr. Harrison:

Q. You have no memorandum about that?

A. Not under that heading. 762

Q. Well, under any other heading?

A. I cannot identify it, no, sir. That is, in our account it is in under its proper title, if it is there at all.

By Mr. McClintic:

Q. The next item is "Clerk hire and so forth, on account of delinquent lands, $18,374.27." Did you include that?

A. That is included in Defendant's Exhibit D-1.

Q. Under this heading, or under the head of officers? I looked for it and did not see it.

A. That is included in our account under officers of the Government, inasmuch as that account includes the salaries of officers and clerks.

By the Special Master:

Q. You say you include it under the title of officers of the Government?

A. Yes, sir; on page 5.

Q. And the aggregate there is $3,190.633.

A. Yes, sir.

Q. Do you include the latter item in that aggregate, so far as you know?

A. So far as I know, yes.

By Mr. McClintic:

Q. The next item is Buckingham furnace lands, $771.72. What have you to say about that?

A. I might say first these furnace lands were in Buckingham County, Virginia, and they were sold, and there were claimants to part of the proceedings, and that amount of about $900 is the amount which was paid to these claimants, plus com- 763
missions out of the amount which was received from the sale of the Buckingham lands. We do not take credit for the sale of the lands, and that is a proper charge against the sale.

Q. You do not charge that anywhere in your accounts?

A. No, sir.

Q. On the next page, the first item is "Transportation of free persons of color to Liberia, $26,103.50." Do you allow that in your account?

A. It is not included in our account.

Mr. Conrad: Why not?

The Witness: Under instructions from counsel.

Mr. Hogg: It is neither an ordinary expenditure nor an extraordinary expenditure.

By Mr. McClintic:

Q. Further down the page (page 4 of Plaintiff's Exhibit D-1), we find "Unexpended postage returned to treasury, $53.13." How could that be a charge?

A. We have not any such account in our exhibit. I think that might be better explained under some other title. I do not know why it is there.

The Special Master: You do not know anything about that?

The Witness: No sir.

By Mr. McClintic:

Q. The next item on this page to which I will call your attention is "Penitentiary: Hatcher vs. Commonwealth, $12,897.96. Do you know anything about that?

A. I do not. 764

Q. Do you find any item like that on the books of Virginia anywhere?

A. I do not recall the item at all.

Q. The next item to which I will call your attention is "Ferriage of troops during late war—"

The Special Master: Referring to that other item, have you looked for it?

The Witness: No, sir.

The Special Master: When did you begin your examination of this plaintiff's Exhibit D-1.

Mr. McClintic: I don't know that he ever begun it.

The Witness: No, I have not.

Mr. McClintic: He went over the books and took out all items and it is from that knowledge that he is testifying.

The Special Master: But you have had this exhibit since last November, have you not?

The Witness: But we were very busy with our own exhibits.

The Special Master: Are we to understand that you have not put in any time at all examining these exhibits of the plaintiff for the purpose of testifying in regard to these figures of theirs?

The Witness: We have just finished with our own exhibits.

Mr. McClintic: What is the fact about that, Mr. Scoville?

The Witness: We have no special examination of the 765
Plaintiff's Exhibits, with the exception of No. 3. We made an examination, not a thorough examination, but a superficial examination, as to the difference between their charges for these roads and our own.

By Mr. Harrison:

Q. Am I to understand you to say that you knew nothing about that item at all, the item of the penitentiary; Hatcher against the Commonwealth?

A. I do not recall it. I do not mean by that that it is not in our account, but I do not recall it under that title.

Q. You do not recall that the books of original entry show the payment of a judgment for that amount?

A. No, sir; I do not recall the item at all.

By Mr. McClintic:

Q. I understood you to say that you had taken up the accounts of Virginia, beginning with the 19th of March, 1823, and taken every item of receipt and item of expenditure up to January 1st, 1861?

A. That is correct, yes, sir.

Q. And every item is either on these papers or on the general balance sheet which is to be filed as soon as it reaches here?

A. Absolutely every dollar received and disbursed.

Q. And then you do not remember having seen an item of Hatcher vs. Commonwealth for $12,000 and something?

A. I do not. 766

By Mr. Harrison:

Q. Did you examine the annual reports?

A. Yes, sir.

Q. You saw no such item there?

A. I do not recall the item. I may have seen it at some time, but I do not recall it.

By the Special Master:

Q. There are 750,000 items.

A. You could not remember all.

Q. The fact is you never made any search for this item?

A. No, sir.

Q. You never criticised this schedule?

A. No, sir.

Q. Or spent any time on it?

A. No, sir.

Q. And the only information you can give is your recollection from the accounts as you go along; that is correct is it not?

Mr. McClintic: From what he knows about the accounts of Virginia—

The Special Master: It is not predicated upon any particular examination of this schedule?

The Witness: No, sir. It would be difficult—

Mr. McClintic: He has not had time.

The Special Master: You have not done it, anyway.

A. No, sir.

The Witness: It would probably be found either under one of our schedules under some other title, or having been excluded, but I do not recall the item.

By Mr. McClintic: 767

Q. In making up your schedule, D-1, did you follow the nomenclature on the books of original entry?

A. Yes, sir. An item of that nature must be chargeable to some account, and we would include that, not under this individual expenditure, but under its proper account.

Mr. Harrison: Are we to understand that you did follow the nomenclature of the accounts as you found them?

The Witness: Yes, sir.

Mr. Harrison: Did you not just say in connection with the item, "Warrants on account general appropriation"—I think that was it?

The Witness: Yes.

Mr. Harrison: Why did you not follow that nomenclature in the statement of your own account?

The Witness: For the reason that warrants on account are not represented in expenses—

Mr. Harrison: I am asking you for the fact. It is a fact that in that instance you did not follow the nomenclature?

Mr. McClintic: Did the books of original entry have any such item as "warrants on account"?

The Witness: They did.

The Special Master: In that instance you did not follow that heading; you analyzed that account and distributed the items under what you considered their proper heads?

The Witness: Yes, sir.

Mr. Harrison: In asking you this question I merely want to develop the fact that in other instances you did not follow the nomenclature that you found in the books of the Commonwealth. 768
I cannot recall the different instances, but you have a military establishment. You did not find any such nomenclature as that in the books?

The Witness: No, sir.

Mr. Harrison: So he did not follow the nomenclature in the statement of his account?

The Witness: I do not know how to express that or explain it any better.

Mr. Harrison: You may have had a reason, perfectly sufficient perhaps, for not doing it; but the question is the question of fact—did you do it?

The Witness: It seems that in this case you have called attention to we have changed the nomenclature in order to state the account.

The Special Master: More intelligently?

The Witness: More intelligently and clearly.

By Mr. McClintic:

Q. The next item to which I will call attention is ferriage of troops during the late war, $54.71. Have you any knowledge of that?

A. I do not recall that.

Q. The next item is "Criminal and Civil Code," $52,073.88. Is that in your account?

A. That item is included in our account. Let me see if I can find just where it is.

Mr. Harrison: It is not included under that nomenclature, is it?

The Witness: No, sir; it is not. It is on page 5 of Defendant's Exhibit D-1, under "printing, compiling, and so forth, of Code, Statutes and Report."

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By Mr. McClintic

Q. The next item is rent $52.25. Do you know what that is?

A. I do not know what that particular item is.

Q. The next item is Virginia Volunteers, $29,470.05. Do you know what that is?

A. That is the expense of getting a regiment of Virginia soldiers ready for the Mexican war, I think, in 1847. It was almost entirely repaid to Virginia by the United States Government.

By Mr. Harrison:

Q. You have no corresponding amount under that heading in your report?

A. No, sir. Neither the expenditure nor the receipts are included in any of our exhibits.

Q. Why not?

A. Because it was not considered by counsel an ordinary expense.

Q. That is the reason it does not appear?

A. Yes, sir.

The Special Master: Do you remember what balance was unpaid? While we are on the items, we might have it on the record.

Mr. Harrison: What was the question?

The Special Master: He said nearly all had been repaid. I asked him what balance remained unpaid.

The Witness: We found charges against that particular Mexican War, $32,101.16. We found that they collected 770
from the United States Government on account of those expenditures, $27,943.66; leaving a balance of expenditures over receipts of $4,157.50.

By Mr. Conrad:

Q. Did you find that the amount received from the United States Government was on the identical item there of charge?

A. Yes; so recorded in the books.

Q. In what books did you find that?

A. In the books of the Auditor of Public Accounts.

Mr. Harrison: When was it received?

Mr. McClintic: Can you give the date of the receipt?

The Witness: I can get it without much delay (referring to memorandum). The money was received from the United States Government in 1848, in 1850, in 1851, in 1852, and in 1853. I find on looking at the detailed analysis that in that item of receipts, amounting to $27,943.66, there are some small items which were refunded, which were not collected from the United States Govern-

ment, but which were refunded on account of overpayments and advances which were returned on this same account. Less than $1,400 was refunded. The balance was collected from the United States Government.

By Mr. McClintic:

Q. The next item is tobacco sales and burnt tobacco, $1,931.30. You allow for that, I believe?

A. Yes; that is in our exhibit. 771

Mr. Anderson: The amount is agreed, is it?

The Special Master: No; they have the amount as $2,666.13, and the amount here is $1,931.30.

Mr. Anderson: There is another item, though, I think, of $454.51.

The Special Master: Well, those two together do not quite make up the amount that they credit—that is, if they do go together.

By Mr. McClintic

Q. The next item is land taxes, $296.59. Do you know what that means?

A. I do not; but I presume it is a refund of taxes, and a corresponding expenditure on our statements is deducted from the receipts from taxes.

By Mr. Harrison:

Q. You mean your statement takes account of that in some form?

A. That is, for taxes refunded. It has been deducted from what we take credit for.

Q. That is a qualification. You say if so and so. You cannot say?

A. I cannot identify it.

By the Special Master:

Q. You can, by taking the time?

A. Yes, sir.

Q. Of course those things you can work out later?

A. Yes; without difficulty.

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By Mr. McClintic:

Q. The next item I call to your attention is "Assessment of free negroes, $897.21." Have you any knowledge of that item, Mr. Scoville?

A. We have included the charges on that account under the account called "General Account of revenue," on Defendants Exhibit D-1, page 4.

Mr. Harrison: You do take account of it, then, under another head?

The Witness: That is the general account.

By Mr. Conrad:

Q. Do you have the same item?

A. General account of revenue is the account.

Q. But you embrace in it the same item that Mr. McClintic has inquired about?

A. Yes, sir. That is the amount paid to the assessors for listing free negroes.

By Mr. McClintic:

Q. There is an item called "Fugitive Slave Fund," $5,201. Do you know what that was?

A. The charges to that account are in the nature of rewards for the capture of fugitive slaves.

Q. You have no charge on your exhibit of that account, have you?

Mr. Conrad: Nothing was more ordinary and usual than that.

The Special Master: You have no topic of that character, have you?

The Witness: No; I do not remember any.

The Special Master: Are you looking now to see whether 773 it is included in any other item.

The Witness: Yes. We include it in Exhibit D-1, page 6, an expenditure under the title, "Rewards," $13,992.64, which is for the apprehension of fugitives and criminals.

The Special Master: And does that probably include this item of $5,201?

The Witness: It probably does, yes, sir.

By Mr. McClintic:

Q. Going to the next item, land sold in 1855, $8.48. Do you recall anything about that?

A. I do not recall that item.

Q. Under the title "Public printing," there is $23,092.31. Do you include that under that head or some other head?

A. We have the same head, page 5 of Defendant's Exhibit D-1.

Q. The next item is "Claims under 27th and 45th Chapter Code of Virginia, $1,344.05." Do you know what that is?

A. I do not.

The Special Master: That is not rewards, is it?

The Witness: I could not tell.

Mr. Conrad: You could not tell without reference to the Code.

By Mr. McClintic:

Q. The next item to which I call your attention is Treasury Note expenses, $375.45. Do you allow that in your exhibit?

A. We do not allow it.

Q. Do you know what it is? 774

A. It is for printing treasury notes.

The Special Master: Printing what?

The Witness: Printing Treasury notes, the notes themselves, the expense connected with printing the notes.

By Mr. McClintic:

Q. That is, Virginia State money?

A. That is Virginia State money.

Q. The next item is "Tax on dividends, $128.50." Do you remember what that is?

A. I cannot say that I remember that particular item, but I am under the impression that it is a refund.

Q. If it was a refund it had no business as a charge here, had it?

A. No, sir.

Q. (Reading): "Arms and munitions of War, $4,111.13." Do you know what that is?

A. That is an expense on account of the early wars, 1812 and 1814, and is not included in our account.

Q. The next is "Survey of Washington's birth place, $139.21." What have you to say about that?

A. That title is self explanatory and we have not included that in the account.

Q. That was not an ordinary expense?

A. No, sir.

Mr. Harrison: Why did you not include it?

The Witness: We did not include it—

Mr. McClintic: If you will allow me to answer, I will say that he did not include it because we instructed him not to 775 include it.

Mr. Conrad: The thing had to be a recurring expense to be an ordinary expense.

The Special Master: That is the position they took, I suppose.

By Mr. McClintic:

Q. The next item is "temporary clerks in auditor's office, $3,826.64." Is that taken care of in your account somewhere?

A. I think it is.

Mr. Conrad: If these two experts had gotten together they could have avoided a lot of this examination.

The Witness: (After looking over papers.) I have that impressed very strongly on my mind, but I cannot locate it.

By Mr. McClintic:

Q. The next item is "marking Virginia and Maryland Boundary, $6,094.44." Do you include that anywhere?

A. No, sir.

Mr. Harrison: Why not?

A. Under instruction of counsel.

By Mr. McClintic:

Q. The next item is maps, $11,400.90. Is that charged in your account?

A. It is not.

Mr. Conrad: What is that,—Maps?

The Witness: Yes, sir.

Mr. Conrad: Published by the State for public use throughout the limits of the entire Commonwealth.

Mr. Harrison: When were those maps published, if you know?

The Witness: I am not able to tell when they were published. I can tell when the money was expended. 776

Mr. Harrison: They were published in 1825, 1826, 1827 and 1828, were they not?

Mr. Conrad: They were, and they were published for the use of the entire Commonwealth.

The Witness: The dates you give are correct—1825, 1826, 1827 and 1828; that is the date of the expenditure of the money.

By Mr. Harrison:

Q. Have you got that same figure in that account?

The Witness: $11,397.24. It is not in our account.

Q. The expenditure is correct?

A. Yes.

Q. And not included in your account on direction of counsel?

The Witness: Yes.

The Special Master: What is the item: "maps?"

Mr. Conrad: For maps which were published and circulated all over the Commonwealth.

By Mr. McClintic:

Q. The next item is public arms, $11,499.97. Is that included in this?

A. We have included the charges for public arms in Defendant's Exhibit D-1, page 5; the amount that we charge there on the military establishment, public arms, pay roll at armory, and so forth, $21,609.30. I think we have combined another account with 777 this account.

Q. The next item is State Convention, $258,677.40. Have you included that?

A. It is not included in any of our exhibits.

Mr. Harrison: That expenditure was made, was it not?

Mr. McClintic: What was it?

Mr. Harrison: It was for the State Convention of 1829-1830 and 1850-1851.

Mr. Spooner: Constitutional conventions?

Mr. Harrison: State constitutional conventions, yes.

The Special Master: Two different Constitutional Conventions?

Mr. Harrison: Yes, sir.

Mr. McClintic: You had one in 1864, too, did you not? You had one at Alexandria?

Mr. Harrison: Yes, there was Pierpont and two or three others there.

Mr. McClintic: There were seventeen people there.

Mr. Harrison: That money was expended, was it not, for the Conventions of 1829-30 and 1850-51?

The Special Master: These conventions are apparently as regular as the eruption of a volcano.

Mr. Harrison: There were two ex-Presidents of the United States in that first convention, and Chief Justice Marshall.

Mr. Spooner: Is that why it was so expensive?

Mr. Harrison: No, but it was a famous assemblage of men.

Mr. Spooner: Oh, yes, it was an extraordinary convention.

Mr. Anderson: It cost about one fourth as much as the convention of 1850-51. 778

The Witness: There was expended $258,906.28 in the years 1830 and 1851-52.

Mr. Harrison: And you did not include that?

The Witness: No, under instructions of counsel.

Mr. McClintic: The next item is "Medical College, $25,000." Did you include that item?

A. No, sir. It was on account of construction at Richmond.

Mr. Harrison: Construction of buildings?

The Witness: I don't know what was constructed.

The Special Master: Which is the item?

Mr. McClintic: Medical College, $25,000.

Mr. Harrison: You do not include that item in your statement?

The Witness: It was not included.

Mr. Harrison: I suppose for the same reason.

The Witness: For the same reason; the instructions of counsel.

Mr. McClintic: And that was for construction, you said, in Richmond.

Mr. Harrison: He said he didn't know what it was for.

The Witness: I said it was for construction in Richmond.

Mr. Conrad: For construction?

The Witness: Yes, sir.

Mr. Conrad: I thought you were asked the question 779
whether it was for a building and you said you didn't know whether it was a building or not.

Mr. McClintic: The next item is "Experimental Railroad, $10,000." Please tell us where that was constructed.

The Witness: There was expended on account of the experimental railroad, $6,000 in accordance with an act passed March 31, 1850, page 15, for an experimental railroad not exceeding two miles in length between the depot of Richmond and Petersburg railroad, and the depot of Richmond and Fredericksburg Railroad, and between such other points as the Board of Public Works may select, furnishing engines and other necessities.

Mr. Conrad: That is not embraced in your account?

The Witness: It is not.

By Mr. McClintic:

Q. The next item is Blair and Bolling, special service, $200. Do you know what that is?

A. The item is very familiar, but I shall have to look further before I can answer.

Q. You do not include it in your account, do you?

A. I cannot tell whether I do or not without further examination of these detail figures.

Mr. McClintic: If the court please, it is now twenty minutes after ten o'clock, and I will not be able to finish this witness to-night.

The Special Master: I hoped you would be able to get through.

Mr. McClintic: There are two schedules besides this one to examine him about.

Mr. Harrison: Are you going to go through those in the 780
same way that you are going through this one?

Mr. McClintic: This is the only way I know to get the information I want to in regard to these items.

The Special Master: Of course I do not want to direct counsel as to how they should conduct this examination, but I think probably seven or eight of these items would be reconciled by the accountants if they could get together and go over them. If the others are of the same character, I see no reason why they should not have a try at it, and then if there are any others that they cannot agree on we can take those up.

Mr. McClintic: What I want to do is to get something in the record, so we can make our arguments on it.

The Special Master: Probably one-half or two-thirds of these

items have not got to be examined by the experts; this witness will probably have to examine that proportion of them to find out whether he included them in other charges. Perhaps I am putting the proportion too high when I say two-thirds, but I will say a great many of them. All of this could be done by the experts themselves, and they could agree on a great many of the items. Of course, here is your State Convention; that is an item about which you would have a controversy. But there are a great many other items which the experts could probably agree on.

Mr. McClintic: I would like to have a statement of the witness as to what they represent, more than the way it is stated here.

The Special Master: Take this Blair Bolling special ser- 781
vice, $200. If it turns out that is included, you do not care anything about it.

Mr. McClintic: I want to say, your Honor, that this proposition inviting us to work with the experts of the other State is an entirely new proposition to me.

The Special Master: If the other schedules are practically like these, there is no reason why the experts should not dispose of nearly all the items. That will not bind either one of you as to whether the items shall be in or out, but they can tell whether the items here appear in your account under another name.

Mr. McClintic: In connection with that, I want some explanation as to what the items are.

The Special Master: This witness it seems has not had an opportunity to examine the schedule. All he has testified to is from his general recollection.

Mr. Spooner. In some respects that has been pretty definite.

The Special Master: It has been definite in some cases, but on the whole not very satisfactory.

Mr. Harrison: All we want is to have your expert confer with ours and let them see what progress they can make in disposing of many of these items.

Mr. McClintic: We do not want the experts to decide this case, however; we will want to argue it.

The Special Master: The experts will not decide the ques- 782
tion; but the question arises, is this item included; or is that item included, and as to a great many of them the experts are able to tell. As to others, the witness cannot remember. That is very natural, of course he cannot remember. It is a physical impossibility for him to remember, it is asking too much of him. As I say, he can recall with regard to some of these items as to whether they are included or not, but as to others, he has to make an examination in connection with a lot of these items before he can make a statement which is satisfactory. Of course, when he says he thinks it is in or thinks it

is not in, that goes for nothing with me; it is either in or out, and it can be ascertained, and he will have to take the time as to a lot of these items, to say certainly whether they are included or not. So, so long as it is understood that the experts are going to get together and go over these items and see if they can agree as to a lot of them, it seems to me we are not gaining very much now by going over this. If there is an item here that Mr. Dixey has been instructed to leave out, it will be left out, of course; he will not consent to its going in. Then if the plaintiffs claim that it ought to go in, I will hear their argument on that.

Mr. McClintic: I want the information more definite as to what the items are.

The Special Master: When we get them weeded down as to the items of controversy, of course I want on the record the facts in relation to those items, so I can take the facts and your argument, and weigh your argument according to the facts; and the experts among themselves can work out these details. So far as 783
they disagree, that will be entirely open to explanation, and to the production of any facts necessary; but you will be in a much better position to put your facts in when you know what they are than you are now.

Mr. McClintic: I realize that.

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[*Vol. 7. July 1, 1909. Plaintiff's Revised Exhibit D-1.*]

[The Special Master]: Now, we will proceed under Paragraph 4.

Mr. Anderson: I have here schedule D-1.

The Special Master: The plaintiffs submit substitute schedule D-1. Is that agreed upon as to the computations?

(The exhibit referred to was filed with the stenographer and marked "Plaintiff's Revised Exhibit D-1.")

Mr. Anderson (replying to the Special Master): Not in all 839
details.

Mr. McClintic: That, as I understand it, Mr. Dixey has not had time to go over and check up. It was handed to him on yesterday, and he did not have time to finish it.

The Special Master: Then we will make more progress by laying that aside.

Mr. Dixey: There is an admitted discrepancy there of almost $50,000.

The Special Master: Is that in any one item or several items?

Mr. Dixey: We do not know.

The Special Master: Then shall we lay that aside for the present?

Mr. Dixey: I would rather have you take Mr. Potter's say on that.

The Special Master: The only question I am interested in is whether all the items in this schedule are agreed upon. I understand that they are not.

Mr. Dixey: That is correct.

The Special Master: Now, the next question is whether the experts will get together and make an effort to reach an agreement.

Mr. Harrison: Might it not facilitate matters for your Honor to go ahead and ascertain what are agreed upon? Take this fourth schedule, which relates to the ordinary expenses of the State government, and leaving out the classification and referring only to the question of the amounts of the ordinary expenses, extending over the thirty-seven years involved, there is only a difference, as I understand it, of $50,000. 840

The Special Master: Well, if the experts themselves can get together and settle that, it saves the time of something like ten or fifteen men.

Mr. Carlisle: Is the difference of $50,000 in the total amount, and not a difference of $50,000 in West Virginia's part of it?

Mr. Harrison: It is a case of the amount, no matter what you do with it.

The Special Master: It is immaterial to me. Now, here is $50,000. If you want to reconcile the $50,000 between yourselves, in connection with this schedule, and the experts have gone over it for the purpose of reaching that result—

Mr. Harrison: The difficulty about referring that to the experts to reconcile is that it means a very considerable expenditure of time and labor in running down the items that compose that $50,000, to see what they are.

The Special Master: Let me ask you this. Suppose you put it up to me to settle? Have I not got to run it down the same way? And then six or seven men on each side have to listen to it. Is it not better to let two men take it and try to settle it if they can?

Mr. Anderson: I wished to find out where it was. It may be we will be able to adjust it.

The Special Master: That is my suggestion, that the experts take it up. I am willing to stay here—of course if you do not agree, I am willing to stay here and hear the controversy between all the parties; but my own notion about it is that if there are items of disagreement in this $50,000 and you do not agree to eliminate it among yourselves, that the experts had better make an 841

effort to agree before we take the time of the experts and the time of all counsel to go into the matter fully.

Mr. Anderson: I hope that counsel will be able to eliminate it.

The Special Master: Very well. It it immaterial to me whether the agreement is reached between the counsel or between the experts. Here is the point—

Mr. Anderson: They have been working on that for six weeks, and they have not been able to find out what those accounts are.

The Special Master: That is going to be the question, whether I will have to sit here and listen to the experts on both sides—

Mr. Anderson: That is the reason I suggest we postpone it.

The Special Master: Very well; and not take the time of the Master and all the counsel on either side, unless it appears that the counsel are not able to agree after the experts put in their work and ascertain what the disagreement is. Is that satisfactory?

Mr. Harrison: Yes, sir.

The Special Master: Then we will spend no further time on Plaintiff's Substitute Exhibit D-1.

[*Vol. 7, July 1, 1909. As to Introduction of Further Evidence.*]

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The Special Master: Then we come to D-1, Plaintiff Revised Exhibit D-1. There the experts, I think, have some computations to make. Have you any evidence to submit in relation to D-1, other than what is in the record?

Mr. Harrison: No other than what is embodied in our schedule.

The Special Master: Unless it should appear that the experts are not able to agree, in which case you would have to submit to me, I suppose, the items of disagreement for me to decide. Have you anything to submit, either of you, under the fourth paragraph, Plaintiff's Exhibit D-1?

Mr. Carlisle: That relates to what?

The Special Master (reading from decree):

"Such proportion of the ordinary expenses of the Government of Virginia since any of said debt was contracted as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of the State of Virginia, with and without slaves, as shown by the Census of the United States."

As to Plaintiff's Substitute Exhibit D-1, paragraph 4 of the Decree, unless the experts are unable to agree on some item now in

controversy, there is no additional testimony to be submitted by either side. Am I correct? 876

Mr. McClintic: Unless there is something overlooked.

The Special Master: I want this distinctly understood. I think I have already stated it a number of times. This hearing is not going to be conducted on the basis of snap judgment against either of you. At the last moment, as far as that is concerned, if either party finds it has left out anything which it thinks seriously or materially affects its rights, I will open the report and see that it goes in. I want to make a report only after having given both parties full opportunity to have all their contentions heard, and if I am satisfied you have left out anything at any time, as I say, I will open the case.

Mr. Harrison: We have nothing in addition to that except what may be explanatory.

The Special Master: In case the experts agree, you have not any additional testimony?

Mr. Anderson: Not as to the amounts, but as to the facts.

Mr. Harrison: That is, in the character of classification.

The Special Master: But until you get the result from the experts, you would not be in a position to go on?

Mr. Harrison: No, sir.

The Special Master: Then, for the purpose of the hearing right now, we will pass paragraph 4.

[*Vol. 7, July 1, 1909. Relating to Differences in Schedules.*]

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[Mr. Dixey]: I think it will be very much longer than Saturday morning before an analysis could be made of the ordinary expenses and an agreement reached on that.

Mr. Anderson: What is the discrepancy; what is the amount of it?

Mr. Dixey: The balance is about $42,000, but there may be hundreds of thousands of dollars involved in that, and we cannot tell until we make the analysis.

The Special Master: How could there be hundreds of thousands of dollars involved, if there is only a difference of $42,000?

Mr. Dixey: Because you have charges and credits each way, 893 and the difference is only $42,000.

Mr. Anderson: Do you stand by your original schedule? Defendant's Exhibit D-1.

Mr. Dixey: We are here now, I understand, for the purpose of reconciling these things. If any errors develop in the course of the analysis, we shall of course want to correct them

Mr. Potter: It will take two months to make an analysis of that account item by item.

The Special Master: There is $42,000 in controversy. The plaintiffs charge you with $42,000 more than you think they ought to.

Mr. Dixey: Yes, sir.

Mr. Anderson: We will accept West Virginia's total rather than have any trouble about that.

The Special Master: Rather than have any trouble about that, Virginia waives that $42,000.

Mr. Anderson: I mean as to that $42,000. We have other figures about which there can be no controversy as to the amount.

Mr. Dixey: That is just the point.

The Special Master: Mr. Dixey's contention is this: That he finds it difficult, I suppose, to apply to any particular item the descrepancy that there may be; is that it?

Mr. Dixey: That is it; that that $42,000 is unlocated.

The Special Master: That is, if it is applied to one item the result may be one thing, and if it is applied to another item the result may be another, and if applied to another still another thing.

Mr. Anderson: I call attention to the fact that I think he is 894
mistaken, because these items have been agreed upon between Mr. Dixey and Mr. Potter; everything has been agreed upon except a discrepancy in the totals of $42,000, and we are willing to accept West Virginia's totals.

Mr. Dixey: I do not know that at this time.

Mr. Anderson: I will read them to you.

Mr. Dixey: Even then I cannot identify them from memory.

Mr. Anderson: I think you can.

Mr. Dixey: No, I cannot. I have had it and gone over it.

Mr. Anderson: Certainly Mr. Scoville can.

Mr. Dixey: Unfortunately Mr. Scoville is ill and is not here.

Mr. Anderson: There is no question that it has been agreed upon between the accountants as to these items between Virginia and West Virginia.

Mr. Dixey: I have not agreed upon that.

The Special Master: Of course the agreement that I ultimately recognize is the agreement between counsel for Virginia and counsel for West Virginia.

Mr. Anderson: I said that they had been agreed upon between the accountants.

The Special Master: In the face of Mr. Dixey's statement that it has not been made, I cannot hold that an agreement has been reached. I cannot report they agree when they do not agree.

Here is the condition that confronts. Here is Mr. Dixey, who 895
is a responsible accountant for West Virginia, and if he tells

me that he does not agree, even if he has heretofore agreed and withdraws that agreement—although of course I do not suggest that that is the fact—I would not be able to hold that an agreement was reached.

Mr. Anderson: Well, we are prepared to prove these items, and by incontrovertible evidence.

The Special Master: I know you are. We have all thought that rather than take the time of all of us by taking your proof and their proof and having me pass upon it, that the wisest thing was to have two men spend their time on it, Mr. Potter and Mr. Dixey, instead of twelve of us or fourteen of us spending our time on the same thing. Now, I have no power to insist on your agreeing. Of course I would be very glad to have you agree if you can. It is entirely a matter for you as to whether you will agree or not. I cannot hold, Brother Conrad, that the experts do agree when they are here and disagree.

Mr. Conrad: I agree entirely in that, but the accountant on behalf of West Virginia stated, as I understood him, in open Court not ten minutes ago that the differences between himself and Mr. Potter amounted to $42,000.

Mr. Conley: $49,000.

Mr. Conrad: Very well; $49,000, or $59,000, if you say so, in favor of the State of Virginia.

Mr. Dixey: May I modify that and say as shown by the schedule presented here to-day?

The Special Master: The amount is immaterial. 896

Mr. Conrad: And the attorney General has stated that and we accept his statement.

The Special Master: You mean that you accept their schedules?

Mr Conrad: Yes, sir.

The Special Master: In full?

Mr. Conrad: Oh, no, the difference. We waive the balance of $49,000, or whatever it is.

The Special Master: What do you say to this suggestion? I suppose the $49,000 may not be attributable to any one item, and of course this is purely a hypothesis on my part; they may contend that it is distributed over various items, and that they cannot make an admission covering it in that way. Is that it?

Mr. Dixey: Yes. There may be hundreds of thousands of dollars involved in it.

Mr. Conrad: We have had that voluntary statement from the accountant for West Virginia, that there may be hundreds of thousands of dollars. We have not heard of it before. We heard it only when the Attorney General of Virginia agreed that he would accept the balance as found by the accountant for West Virginia. Now,

my object in rising to occupy your time is this: We have agreed to all these things, we have agreed to fix the time as 1823 instead of 1820 or 1821; we have agreed to the other items, in the interest of time only—not because we believed they were right and we were wrong. Now, it is proposed again, and I understood that it would be proposed, last night, that there shall be another adjournment of this case. If your Honor has any interest professionally or otherwise that requires your attention away from here, 897
we yield to that, of course; but if there is to be another adjournment, I want earnestly to suggest that that adjournment be to a time when the final argument and submission of this case to you be made. Let the time to which this adjournment is made be occupied, as much of it is necessary, in getting this record into condition; but let the remainder of that time be occupied in the final argument and submission of this case to you.

The Special Master: You mean let the time in the interim be so occupied?

Mr. Conrad: Yes, let the next meeting be the final meeting, wherever it is, New York or anywhere else. If there are any matters of reconciliation of discrepancies to be made there, let that be done before the argument is entered upon; but let it be done on that occasion in New York, or wherever you choose to meet, and when that is done, then let us enter upon the final argument in this case and put it in your hands, so that there may be no other adjournment for the purpose of perfecting this record. This in the interest of time. * * * * *

So that the only schedule that appears to involve the possibility of serious delay is Schedule D, relating to the ordinary expenses of the State Government. There is a difference between the two accountants in the totals, of $49,000, that being Virginia's excess over West Virginia's statement. Now, we say we will accept West Virginiaa's statement. 898 899

The Special Master: In toto.

Mr. Harrison: Yes, sir.

The Special Master: On that proposition?

Mr. Harrison: On that proposition. It has been suggested by Mr. Dixey, the accountant for West Virginia, that he is not prepared to say—

The Special Master: That presents a little different question. The impression I got was you were not willing to diminish your claim by $49,000, but the proposition now is that you will take the schedule presented by West Virginia as true.

Mr. Harrison: Not as to classification.

The Special Master: No, not as to classification.

Mr. Harrison: I think we agree, and probably in an hour we can determine among ourselves.

The Special Master: It does not involve classification. Will you take the schedule of West Virginia as submitted, as to the amount, without binding yourselves as to classification?

Mr. Harrison: We can answer that in a little while, after these accountants see if that is not the fact.

The Special Master: In the first place, I cannot require either of you to agree on either of these things. You are only doing it as a matter of courtesy and to get through with this work; but if West Virginia has submitted a schedule, and as to that Virginia agrees that the amount stated therein is accurat, I 900
will take those amounts as accurate, and as the agreement of both parties. As to the classification, I will hear you about that later. If you are willing to take the classification of West Virginia on those amounts as accurate in amounts, that eliminates that from controversy.

Mr. Harrison: I think that can be done.

Mr. Anderson: We will take West Virginia's account, as far as it goes.

Mr. Harrison: I was going to say as far as it goes.

Mr. Anderson: We have eighteen million dollars in addition.

The Special Master: Those are separate entirely. They include interest.

Mr. Anderson: Yes.

The Special Master: Of course that item we do not require them to agree to.

Mr. Harrison: They do agree on amounts.

The Special Master: Yes. Then it is for me to say, with the evidence in this case, whether that interest will be allowed or not. But you agree on the amounts. All you want to be heard on is the question as to whether it will be allowed.

Mr. Harrison: I was going to make this suggestion. West Virginia's schedule shows $17,582,585.25 of ordinary expenses of the State Government during the period covered by the contracting of this debt, down to 1861. Is not that correct?

Mr. Dixey: No, sir, it is not. We cannot even start out— 901
our schedule shows over $18,000,000 as it stands.

Mr. Anderson: Then you have changed it?

Mr. Dixey: No, sir. Mr. Potter has changed it. Mr. Potter has deducted two items from our schedule and put them in another schedule in another account. Those two items are agreed to, and added to that amount he has there, brings ours. But the whole principle is so different that agreeing to the $42,000 would not reconcile the difference between us; because Mr. Potter takes the original figures and deducts hundreds of thousands of dollars, and then takes our original figures and adds hundreds of thousands of dollars; and

they say the difference is $42,000. It is true, but it does not mean anything.

The Special Master: But if they do this; if they take your schedule in toto, with the amount stated, as a true statement, the only thing left on the schedule is the question of proper classification. It is quite open to Virginia, if they want to do it; if you have submitted a schedule containing items, it is open to you to agree that those items are a truthful statement of those items, and reserve the right as to the question of whether they are properly classified. Now, if there are any details that can be submitted by the experts on either side that will illuminate the question as to whether or not they are properly classified, that is something you know more about than I do; but if there are any other things to be determined by Acts of the Legislature and not by experts, those are things that I will have to pass upon myself, probably. Do I make myself clear?

Mr. Dixey: Yes, sir. 902

The Special Master: And if Virginia is willing to take that position under this paragraph, to agree that these amounts are accurately stated, I will enter it upon the record; and later I will hear you upon the proposition of classification. If you need any additional evidence to establish your contention, pro or con., that evidence I will hear now. It seems to me that simplifies the whole situation, if Virginia is willing to take that course.

Mr. Harrison: Do you deny that your statement of the ordinary expenses, after deducting school expenses, leaves $17,000,000?

Mr. Dixey: That was not your first statement. I do not deny that.

Mr. Harrison: Well, I say we accept that statement, so far as it goes, as being accurate; and that is what he shows. The difference, if your Honor pleases, includes items that they have excluded and we have included.

The Special Master: What are those items?

Mr. Harrison: As to those items, they are in agreement about, as I understand.

The Special Master: As to amounts?

Mr. Harrison: As to amount. It is purely a question of whether they shall or shall not be included. Let me go a little further.

The Special Master: Very well.

Mr. Harrison: We show our expenses, our share of the expenses of the State Government, for the period included was $37,875,000 and something.

The Special Master: Some $18,000,000 of which is interest? 903

Mr. Harrison: Some $18,000,000 of which they agree upon as the amount, and some million or more of several items are agreed upon as to the amount.

The Special Master: That eliminates that.

Mr. Harrison: It is merely a question of whether they shall be or shall not be included in a statement of ordinary expenses.

The Special Master: Upon the question of whether they ought to be or ought not to be included, is there any information that the experts have gathered that will illuminate that question?

Mr. Conrad: I think it is purely a question of law.

The Special Master: You understand the question. Of course, if there are any computations that have a legitimate bearing upon that proposition, one way or the other, we want them. If there are not, we will not spend any more time on those items. For instance, $18,000,000 interest. If they both agree that that is the sum to be charged, if any sum is charged, that ends that so far as any testimony in this case is concerned—unless you have something in the way of legislation or anything else, whatever it is, that tends to show that it ought not to be included, or the other side has anything tending to show that it ought to be included; if you are willing to agre to the schedules submitted by West Virginia, with the exception of a number of items, the amount of which you agree to, I do not see any difficulty in reaching an agreement on this proposi- 904 tion. Then we bring the controversy down to these items as to which you agree upon the amounts, but do not agree as to whether they shall be included.

Mr. Harrison: That is a matter of argument.

Mr. Conrad: That would be for the argument.

The Special Master: It is a matter of argument in the end, but, *quo ad*, is there any evidence on that that you desire to introduce?

Mr. McClintic: Before we go on, I have had no opportunity to look at that. I understand it was only given to Mr. Dixey yesterday.

The Special Master: Very well. Let me see if I understand it. You have presented a schedule here by Mr. Dixey, to which he has sworn, as being true, and I have no doubt he believes is true, and it states the facts from your point of view. They present a schedule on the same subject matter. In their schedule they include items which you do not include, and which you say ought not to be included; but as to these items Mr. Dixey agrees that they are properly stated.

Mr. Dixey: I do not know that I do. I have not had time to examine the schedule.

The Special Master: I perhaps was assuming too much. While it may be embarrassing, we have to take these things as we find them here. I cannot compel you people to agree. I can do this. West Virginia submits a schedule under this paragraph. If Virginia sees fit to agree to the accuracy of all the items in that schedule, I

will enter upon the record that the parties agree as to those 905
items, in the amounts. Now, in addition to that West Virginia or Virginia does not agree to the classification contained in that schedule and wants to produce any evidence sustaining her contentions, and if she does want to produce such evidence I will hear it. If they do not agree and they think the evidence is already in, that settles that. If, on the other hand, the other side want to submit additional evidence to sustain their schedule, to sustain their contention that their schedule is correct, I will hear that. If they have not anything to submit as to the items in your schedule to which Virginia agrees, there is no necessity for any further controversy because there is no disagreement. Now, as to these items. Take, for instance, the interest and the half dozen other items that you say ought to be included and which they say ought not to be included. If you agree on that amount, I will enter that as an agreement. If you do not, I will give Mr. Dixey time to verify and see if he does agree. Of course, in the absence of their agreeing, we would have to sit here and take the testimony, or I would have to appoint an expert to go over it. I do not suppose anybody expects me to perform the office of expert. Of course, if these experts do not agree, and you do not want to sit here and listen and examine, I would have to submit the matters to an expert who would go into the question and then report to me, and would be subject, of course, to cross examination. It seems to me that is the situation. If Virginia is merely to say that they agree to your schedule under this paragraph and the amounts stated therein, not binding 906
themselves as to classification, I do not see that there is any further controversy about the amounts.

Mr. Dixey: There is no schedule in evidence which Virginia could agree to at the present moment. Our original schedule showed a total of over $20,000,000, from which Mr. McClintic withdrew some $2,000,000, leaving about $18,000,000, in addition to that there have been various items agreed upon that have altered some of the items as they appeared in the original schedules. The changes have not been material, but I believe the statement is about $351.00. There are twenty or thirty changes in the schedule as originally presented, I believe, and the new schedule has not been presented in evidence. It was our understanding that it would not be until Virginia and West Virginia agreed on it.

The Special Master: What is the reason the schedule you submitted at the last hearing is not in evidence?

Mr. Dixey: It has been altered.

The Special Master: Well, I would like to know why the schedule you offered last time is not in evidence?

Mr. Dixey: It is.

The Special Master: Well, if they see fit to agree to that, how am I going to help that and how are you going to help it?

Mr. Dixey: There was $2,000,000 withdrawn from that at the last hearing.

The Special Master: I don't care whether there was $10,- 907
000,000 withdrawn. *Quo ad,* suppose they withdrew all the others. I knew nothing about the details of this, but if with the exception of the $2,000,000 which they withdrew, they are willing to agree to that schedule, what harm is there in it?

Mr. Conrad: I should like to know on whose behalf and what interest is represented by the counsel accountant?

The Special Master: It seems to me this comes to a simple proposition—

Mr. Carlisle: I would say in behalf of Mr. Dixey that I do not understand that he is undertaking to act as counsel.

The Special Master: I do not understand that he is either, not at all. I don't think that Brother Conrad intended to intimate that Mr. Dixey was transgressing—

Mr. Carlisle: We cannot explain it as well as Mr. Dixey can, very often.

The Special Master: Perhaps they appreciate that Mr. Dixey was handling the matter with considerable intelligence.

Mr. Carlisle: I suppose it is understood that we meet to-morrow morning for the purpose of hearing these two witnesses, unless their depositions are agreed to.

The Special Master: No; I understood that was rather superseded by the agreement that they take those depositions anyway.

Mr. Carlisle: Then, perhaps my suggestion was not appropriate.

The Special Master: If have submitted a schedule here at the last session, which with the exception of an item of $2,000,000 the other side are now ready to agree to—it may be that I do not 908
quite comprehend the full situation, but for the life of me, I cannot see why there should be any further controversy about that.

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The Special Master: I would like to make this inquiry. As 912
to Paragraph 4, which involves the schedule we have been talking about, where you eliminate the $2,000,000 item, are the counsel for Virginia prepared now to say that they will take the schedule submitted by West Virginia and agree to the accuracy of all the items stated therein?

Mr. Anderson: We agree to it as far as it goes. The errors in West Virginia's statements are errors of omission.

The Special Master: Will you note the question that I put. Will the counsel for Virginia enter now upon the record the statement that they agree to the accuracy of all the items submitted by the schedule for West Virginia under paragraph 4, the same paragraph as to which Virginia submitted its schedule, Plaintiff's Exhibit D-1? Do you agree to the accuracy of those items? If you do—

Mr. Anderson: We agree to those items as far as they go.

The Special Master: My question does not include any other items. I would like to know without qualification if there is any objection. The question is especially confined to the schedule. West Virginia submits a schedule. It has withdrawn an item of $2,000,000. With the exception of that item, West Virginia stands by the items therein stated as being accurate in amount. Does Virginia now agree to the accuracy of that schedule, in amount, so far as that schedule goes?

Mr. Anderson: So far as the amount goes.

The Special Master: That may be entered upon the record, that Virginia and West Virginia agree upon the schedule submitted by West Virginia, marked "Defendant's Schedule D-1," 913 that the amounts stated therein, in that schedule, are correctly stated; and the Master will report that the parties agree thereto. Now, that eliminates that schedule, so far as that goes.

Mr. Conley: But as modified at the time of its introduction.

The Special Master: Oh, certainly. It does not bind either party to the schedules, but it does eliminate every item in that schedule from now, except that $2,000,000 item. Now, there are items that Virginia claims ought to be included in that schedule. I will read them. Is this it (indicating)?

Mr. Harrison: Yes, sir.

The Special Master: Now, what are the items that you claim, Brother Harrison, ought to go in here?

Mr. Harrison: I think it would be better to let Mr. Potter take the stand and explain this now.

The Special Master: Does page 2 include all the items that are not included in the schedule?

Mr. Harrison: Pages 3 and 2.

The Special Master: Just give me the items that you claim should go in, which they have not included. Tell me where they are. First, in the item of interest.

Mr. Harrison: No. Look at the top of page 2. We are taking up the items of page 2 and 3 that do not embrace the interest. That is on a different page, which we call your attention to presently.

The Special Master: Yes.

Mr. Harrison: Now, you will observe that the first item on page 2 of our schedule, substitute, is dependent on original totals, deducting school commissions. They have deducted from their ordinary expenses school commissions. 914

The Special Master: There is an item of $2,000,000—

Mr. Carlisle: No, that is $860,000. That is part of that.

Mr. Harrison: They did deduct, in all, $2,000,000. I think I had better let Mr. Potter explain that.

The Special Master: All right.

Mr. Harrison: At all events the figures following there will show. That item, if your Honor please, is the ordinary expenses of the Government, total amount shown, according to defendant's exhibit, revised exhibit. Now, we say that is incorrect in so far as it does not include other items that ought to be included as ordinary expenses.

Mr. Carlisle: You have agreed to our items?

The Special Master: We have agreed to the items, yes. What I want to find out is the item he says should be included.

Mr. Harrison: The first is tobacco receipts deducted by the defendants from ordinary expenses, amounting to $353,123.96.

The Special Master: Please step around here, Mr. Dixey.

Mr. Harrison: No, let Mr. Dixey say whether that is not correct.

The Special Master: You have not included that. They think it ought to be included. 915

Mr. Harrison: You have taken credit for it where they ought not to have taken credit for it, and we are putting it back. You are trying to take credit for it.

Mr. McClintic: No, we are not taking credit for it.

Mr. Harrison: I ask Mr. McClintic if I am to understand him to say that that item was not taken account of by West Virginia at all.

Mr. McClintic: Let the expert testify.

Mr. Harrison: You are withdrawing your remark?

Mr. McClintic: No, I am not withdrawing anything: I simply don't want to get into a controversy.

The Special Master: Mr. Dixey, please state whether or not the amount of $353,123.96, which appears in the plaintiff's substitute Exhibit D-1, is a correct statement of tobacco receipts during the period.

Mr. Dixey: May I ask a question preliminary to answering that? The original figures in this schedule have been restored.

The Special Master: That does not quite answer the question.

Mr. Dixey: If it does, yes; if not, no.

The Special Master: Here is a question—and if I do not make it plain, say so. I will try to make it plain. The question is whether the item of tobacco receipts, $353,123.96, which 916

appears on page 2 of Plaintiff's Substitute Exhibit D-1, is accurately stated in amount.

Mr. Dixey: It agrees with the amount in Defendant's Exhibit D-1 as originally introduced.

The Special Master: You may eliminate that suggestion and answer the question just as I asked it. I do not want it confused that way. Is the amount of $353,123.96 the correct aggregate?

Mr. Dixey: I don't know, Mr. Littlefield.

The Special Master: Have you not got it in one of your schedules?

Mr. Dixey: There are two figures here, one the original figure and one the adjusted figure.

The Special Master: What is your original figure?

Mr. Dixey: The original figure was that amount.

The Special Master: The original figure made by you?

Mr. Dixey: Yes.

The Special Master: Intended to be true?

Mr. Dixey: Yes, sir.

The Special Master: Was it true?

Mr. Dixey: We believed it to be so.

The Special Master: Do you believe it to be true now?

Mr. Dixey: There have been adjustments made—

The Special Master: Do you believe it to be true now? You said it was true; do you believe it to be true now? If you do, that settles that. If you do not, please say so.

Mr Dixey: I do not think that is the correct figure now.

The Special Master: You do not think it is? 917

Mr. Dixey: No, sir.

The Special Master: On revising your notes and figures, you have discovered an error?

Mr. Dixey: Yes, sir.

The Special Master: What is the amount of the error?

Mr. Dixey: The revised figures are $346,560.65.

The Special Master: Then, as to that item, you do not agree, and you want to change your original testimony, do you not? You first testified that that item was correct, that the figures $353,123.96 was correct. Did you or did you not?

Mr. Dixey: Yes, sir; that was the original testimony.

The Special Master: Now, then, since then you have discovered that you made a mistake. Is that right?

Mr. Dixey: Yes, sir.

The Special Master: Very well. We will leave that out. Now, what is the error?

Mr. Dixey: $346,560.65, as I have it.

The Special Master: Are you satisfied that that amount is correct?

Mr. Dixey: No, sir; I am not. That was to be compared with Mr. Potter, and I am not entirely sure that it has been so compared.

The Special Master: Well, I will ask Virginia if Virginia is willing to agree that $346,560.65, now changed by Mr. Dixey, is the accurate statement of the amount. Are you willing to agree to that?

Mr. Harrison: No, sir; we do not agree to that because we have already compared it with his chief of staff and 918 have ascertained that the $353,000—

The Special Master: We cannot discuss that, then. I cannot compel you to agree. It is open to you on cross examination to ascertain why the change was made. Take the next item, "Constitutional Convention."

Mr. Harrison: Before that, I would like to ask Mr. Dixey what he did with that in his account.

Mr. Dixey: I understood that there was a tobacco warehouse included originally, about $4,000, which was deducted, and I think that that was agreed upon between Mr. Potter and Mr. Scoville.

Mr. Harrison: But that does not answer the question. Do you not take credit for $353,123.96 in your account by deducting those tobacco receipts that go to ordinary expenses?

Mr. Dixey: On the original schedule, yes, sir.

The Special Master: That will show.

Mr. Harrison: You do do that?

Mr. Dixey: Yes, sir.

Mr. Harrison: Where did the receipts come from; where were they derived?

Mr. Dixey: From the inspectors of tobacco, received from the inspectors of tobacco, less certain amounts that were paid out and expenses of the Commissioners, refunds, and amounts paid for burnt tobacco; and the balance was that amount.

Mr. Harrison: Where were those warehouses located?

Mr. Dixey: They were located all over the State.

Mr. Harrison: Were any of them located in the territory now constituting the State of West Virginia?

Mr. Dixey: Not that I recall, no, sir.

Mr. Harrison: Why, then, do you deduct receipts of to- 919 bacco as a proper credit on the total of ordinary expenses of the State government?

Mr. Dixey: These items were all gone over in conference with counsel and that was by instruction of counsel.

Mr. Harrison: What have the receipts that the State may have derived from her connection with the tobacco warehouses located in the present State of Virginia got to do with West Virginia's fair proportion of the ordinary expenses of the State government?

Mr. Dixey: Well, they were the general receipts that seemed to

belong to the State as a whole, and we thought it was the best way to apportion them—simply to deduct them from the ordinary expenses.

Mr. Harrison: West Virginia takes credit for something that Virginia received into her treasury—

Mr. Dixey: This is not a credit to West Virginia.

Mr. Harrison: Does not West Virginia take credit for it?

Mr. Dixey: Not for that.

Mr. Harrison: Have you not deducted that from your total ordinary expenses?

Mr. Dixey: Yes, sir.

Mr. Harrison: Is not that taking credit for it?

Mr. Dixey: No, sir; certainly not. West Virginia gets credit for only her proportion of it, that comes from the total of all the ordinary expenses.

Mr. Harrison: I understand. I say that diminishes the total of the ordinary expenses, does it not?

Mr. Dixey: Yes, sir; but West Virginia did not get credit 920
for it, but only a part of it.

The Special Master: Except her pro-rata share, and your theory is that that should be deducted in order to get the net?

Mr. Dixey: Yes, sir.

Mr. Harrison: And you say you got that from conference with counsel?

Mr. Dixey: From a conference with counsel, yes, sir.

Mr. Harrison: I want to remind you of the statement that Mr. McClintic made at the bar a few moments ago, that there were no warehouses located in West Virginia and of course West Virginia had nothing to do with receipts from tobacco warehouses.

Mr. McClintic: I am not testifying.

The Special Master: I do not understand that Mr. Harrison claims that this was chargeable to West Virginia *per se*, but in getting at his total of ordinary expenses covered over the whole State, that it is proper to deduct this. That is his theory. He deducts this to get his net expenditures. Whether there is legal foundation for it, of course is another proposition.

Mr. Harrison: As to that, Virginia takes no account of that as having any proper place in the statement of the ordinary expenses, and in order to restore the status of the ordinary expenses to the figures that she thinks are correct, she puts that item back.

West Virginia having taken it off she puts it back in that 921
column.

The Special Master: That is, West Virginia practically undertakes to make a wash entry of it, that is, if she is allowed the credit you want to make the charge, one counterbalancing the other?

Mr. Harrison: Yes.

The Special Master: I understand that; but the thing we are interested in particularly now is the amount. Of course, Mr. Dixey has changed the amount to $346,000. Now, what I would like to know is whether Virginia agrees to that.

Mr. Anderson: No, because the other amount has been deducted by West Virginia. We do not, for that simple reason.

The Special Master: I understand, but that amount of $353,123.96 would go out altogether, and in its place would be the $346,560.65.

Mr. Anderson: That would require a re-statement of their whole account, because they have deducted it.

The Special Master: But that could be arranged without any trouble.

Mr. Anderson: Of course; but the way to correct that is to charge back the same amount.

The Special Master: That is true. I understand Mr. Dixey to now say that instead of the item being $353,000 it should be $346,000, and he wants to credit the general sum of ordinary expenses with that and reduce it and make it net. Now, are you willing to agree that $346,560.65 is the amount of the tobacco receipts, either to be credited or charged, as the case may be. If they credit it, you say they ought to charge it, so as to offset it. 922 Are you willing to agree that the amount shall be $346,560.65?

Mr. Harrison: It involves this. There would be a difference of some $6,000 or $8,000, and that $6,000 or $8,000 consists of items that they have located elsewhere, and have taken credit for elsewhere. It is the sale of a warehouse in Virginia—

The Special Master: How much did you receive for it?

Mr. Potter: $5,880.81.

The Special Master: Are you able to state whether that $5,880.81 is correct, the sum allowed on account of the sale of the warehouse?

Mr. Dixey: I have not the figures here.

The Special Master: Where are your working papers?

Mr. Dixey: Downstairs.

The Special Master: Bring them up, please.

Mr. Carlisle: I may be mistaken, but I have understood that the figures in the original account presented by Mr. Dixey, with the exception of about $2,000,000, have been agreed to. Now, I understand this examination to show that they are not correct.

The Special Master: No; what we are doing now, if I understand it, is this. Virginia claims that there should be other items allowed for which they are entitled to charge under so-called ordinary expenses.

Mr. Carlisle: They want an additional item put in. Now they have agreed that the items are correct.

The Special Master: Is it your point that that $353,123.96 923 was included in that schedule as a credit?

Mr. Carlisle: I don't know.

Mr. McClintic: Yes, sir.

The Special Master: And therefore that they agree to it?

Mr. Carlisle: It is credited there.

The Special Master: And having been credited there, you say it ought to be settled?

Mr. Carlisle: They having agreed to it.

The Special Master: Very well. Let me call your attention to the fact that your expert is the man who now disagrees to it.

Mr. Carlisle: He cannot disagree to it.

The Special Master: Very well, then. Mr. Dixey declines to say he would agree to it. He said he testified the other day and wanted to change it. It stood as $353,123.96 and it was your expert that undertook to change it to $346,560.65. Of course if you want to ride over your expert, you have a right to do so.

Mr. Carlisle. Mr. Dixey made his answer in response to a question put by the other side.

The Special Master: No, it was in response to a question by me.

Mr. Carlisle: By somebody.

The Special Master: If you say, Brother Carlisle, that counsel for West Virginia thinks that the item of $353,123.96 is correct and should go into the accounts, that settles it.

Mr. Carlisle: I have not said it was correct, for I don't 924 know anything about it. I have simply said that the parties on the other side agreed it was correct, and I thought the record showed that the amounts and the items were correct.

The Special Master: It did show it until your own expert declined to accede to it.

Mr. McClintic: It is incorrect, because they have deducted a building and certain accounts—

The Special Master: We will get there in a moment. Send down for your notes, Mr. Dixey, please. Of course, if the point is made that that is included as a credit and that is binding on the parties, of course that eliminates it.

Mr. Carlisle: Suppose we want to prove something different from that account; would you be willing to do that—

The Special Master: No sir.

Mr. Carlisle: That is what they are trying to do.

The Special Master: Then that settles that, and we will not discuss it any longer. The fact about it is, as it stands now, the

objection to the accuracy of this item comes from Mr. Dixey and nobody else.

Mr. Carlisle: In response to a question.

The Special Master: Certainly, in response to a question.

Mr. Carlisle: I thought when Mr. Harrison began the examination and when your Honor put that question to Mr. Dixey that he was trying to show that some item had been omitted.

The Special Master: I thought so too.

Mr. Carlisle: And I understand the agreement to be that the items there are correct items and that the amounts are correct, but if there are any items that ought to be put in—

The Special Master: I understood it that way, but it turns 925
out we were in error and this item appeared in the schedule prepared by your accountant as a credit. I have misunderstood that just as you did. If you take the point that having appeared in that schedule as a credit, $353,000, that that is an agreement on that item, I suppose that is agreeable to the other side.

Mr. Carlisle: Yes; but I would have objected immediately if I had not understood he was trying to introduce some new item.

Mr. Anderson: We agree as to the amount, but not as to the application.

The Special Master: We can settle that now. Mr. Carlisle makes the point that this schedule to which you agreed contains this item of $353,000. Do you object to that?

Mr. Harrison: We do not agree that it is a proper item of credit.

The Special Master: That is not the question. The question is as to the amount.

Mr. Harrison: Yes, sir.

The Special Master: Very well. There is no more controversy about the $353,000. You may record the amount as agreed to by both parties and was included in the previous schedule in accordance with the suggestion of Mr. Carlisle.

Mr. Anderson: We never agreed it was a proper credit.

Mr. Carlisle: Whether proper or improper, you have agreed to it.

Mr. Harrison: Oh, no.

Mr Anderson: I cannot allow the remark made by Mr. 926
Carlisle to go unchallenged. We did not suppose we were to be led into a trap. We agreed as to the amount and did not agree that there were not any set-offs against it, and errors in the method by which that result was reached—

Mr. Carlisle: If there was error in the account, then they were not correct and your agreement was wrong. You said they were correct.

The Special Master: The agreement went so far as to agree to the accuracy of the items and the amount stated therein, and it did

not go so far as to bind either party on the question of classification.

Mr. Carlisle: No, sir; not at all.

The Special Master: And as to whether the items were or were not properly charged, I think I have stated that as much as fifteen times, and so many times I can re-state it as often as may be necessary for my own illumination, I do not intimate that anybody else needs to be illuminated about it.

Coming to the next item, Constitutional Convention, $258,906.28. I would like to ask Mr. Dixey if that is correct.

Mr. Dixey: $258,000, yes, sir.

The Special Master: That is agreed to by both parties as correct in amount. Do you have any objection to that?

Mr. Anderson: No, sir.

Mr. McClintic: No sir. 927

The Special Master: The next item is, "Slaves. Cost of Slaves transported and executed, $311,168.35." Is that item correctly stated in amount?

Mr. Dixey: (After referring to memorandum) $311,168.35.

The Special Master: That item is also agreed to in amount?

Mr. Anderson: Yes, sir.

The Special Master: The next is "Boundary Line, $16,704.78." Is that agreed to in amount?

Mr. Harrison: That is the aggregate of several boundary lines.

Mr. Dixey: No; it is given in one here, $16,704.78.

The Special Master: Is that agreed to?

Mr. Dixey: That is correct.

Mr. Anderson: Yes, sir.

The Special Master: That item, then, is agreed to by both parties?

The next item is "Maps, Commonwealth and Board of Public Works, $16,628.04 and $11,446.48;" making a total of $28,074.52.

Mr. Dixey: That is correct.

The Special Master: Is the amount of that item agreed to by both parties?

Mr. Anderson: Yes, sir.

Mr. Dixey: Yes, sir.

The Special Master: The next is "Deaf, Dumb and Blind Institution, 1845 to 1860."

Mr. Dixey: I will have to ask you to wait a moment. (Continuing after referring to memorandum.) We do not agree on that.

The Special Master: What is the difference, please?

Mr. Dixey: Well, they have got a total of $80,661.94. There is a difference of $20,000.

Mr. Potter: That is through the Literary Fund. 928

Mr. Dixey: I did not recognize it immediately. It can be reconciled, but we do not agree.

The Special Master: How about that? Is West Virginia willing to agree to—what is the sum that you make it?

Mr. Dixey: What became of that other $20,000?

The Special Master: No matter about that. What do you say you are willing to agree to?

Mr. Dixey: We have $100,661.94.

The Special Master: You have $100,000 and they have $80,000?

Mr. Dixey: I say we have it. It is merely a memorandum on our part. It has never been introduced in evidence as part of the account.

The Special Master: What objection, then, is there to agreeing that the amount of $80,000 is the correct amount of the item? You make it more; they simply claim that. If they are willing to agree to your item of $80,000, that ought to settle that.

Mr. McClintic: We will agree to that being the amount.

Mr. Anderson: The other $20,000 we thought ought to be struck out.

The Special Master: Then the amount of $80,661.94 is agreed to?

Mr. Anderson: Yes.

The Special Master: The next item is "International Exchanges, $2,836.19." Is that agreed to as to amount? 929

Mr. Dixey: That is right.

The Special Master: That item is agreed to as to amount. The next item is, "Over-payment of Treasury Note, $50." I suppose that item is agreed to in amount?

Mr. Dixey: $50 is right.

The Special Master: Let it be recorded that that is agreed to.

The next item is "Printing Treasury Notes, $375.74." Is that agreed to as to amount?

Mr. Anderson: Yes.

Mr. McClintic: Yes.

The Special Master: That is agreed to.

The next item is "Loss account of Counterfeit Money $190." Is that agreed to as to amount?

Mr. Dixey: Yes.

Mr. Anderson: Yes.

The Special Master: That is agreed to.

The next is "Virginia Military Institute, Additions and Improvements to Buildings, etc., $151,000." Is that amount right?

Mr. Dixey: $151,000 even is right.

The Special Master: That amount is agreed to by both sides, as to the amount?

Mr. Anderson: Yes.

Mr. Dixey: Yes.

The Special Master: "University of Virginia, Water Supply, $25,000." Is that amount agreed to? 930

Mr. Dixey: $25,000.

The Special Master: Let the record show that that amount is agreed to.

The next item is "Improvements, Public Square, and Improvements, Capitol Square, $1,456.91 and $12,278.47." Is that agreed to as to amount?

Mr Dixey: That is right.

Mr. Anderson: Yes.

The Special Master: The next item is "Fugitive Slave Expenses, $701." Is that amount agreed to?

Mr. Dixey: Take those items, that $701 and that $1,500; I have it in one.

The Special Master: You have $2,201?

Mr. Dixey: Yes.

The Special Master: Is that agreed to as to amounts?

Mr. Dixey: Yes; that is right.

The Special Master: The next is "Penitentiary Lot and New Hospital Building, $17,947.48." Is that agreed to as to amount?

Mr. Dixey: Yes.

Mr. Anderson: Yes .

The Special Master: The next item is "items of Indian defense in 1834, 1835, $754." And the next item is calling out the militia at Wheeling in 1838, $1,099. Those two items together make $1,853. Is that agreed to as to amount?

Mr. Dixey: We have not got that, $1,853.00; we will have to make further investigation.

The Special Master: How near to it have you got it?

Mr. Dixey: Total $1,099. 931

The Special Master: You have not got the $754?

Mr. Dixey: We do not locate it.

The Special Master: Well, the amount of the item $1,099, for calling out the militia at Wheeling in 1838 is agreed to?

Mr. Dixey: Yes.

The Special Master: That leaves $754?

Mr. Harrison: You have not that item at all?

Mr. Dixey: We do not locate it.

The Special Master: We will not wait for that.

Mr. Potter: It is probably included in the expenses of old wars.

Mr. Dixey: We can probably locate it.

The Special Master: The next is "Medical College of Virginia, Additions and Improvements to Buildings, etc., $25,000." Is that agreed to in amount?

Mr. Dixey: That is right.

The Special Master: That is agreed to.

The next is "Attorney General's Fees for prosecuting Selden Withers & Co., $500."

Mr. Dixey: Yes; $500.

The Special Master: That is agreed to as to amount?

Mr. Dixey: Yes, that is correct.

The Special Master: The next is "Eastern and Western Asylums: Additions and Improvements to Buildings, $363,845.56; and Support, $7,450.01; making a total of $371,295.57. Less buildings, original, $27,000, leaving $344,295.57." The first item is additions and improvements, $363,000. You have it right there, have you not?

Mr. Dixey: Yes. I have got to locate it. I have it. $371,295.57. They deduct buildings, $27,000, which I do not 932
locate immediately in my figures here.

Mr. Potter: That is included in the $371,000 but has been deducted.

The Special Master: Then, is it proper to say that the item of $344,000 is agreed to as to amount, after making a deduction of $27,000?

Mr. Dixey: Without knowing that there are not more buildings in there, I could not say.

Mr. Anderson: That is the original asylum.

The Special Master: Shall we mark that item as agreed to in amount?

Mr. Anderson: You can mark the $371,000 agreed to, if you want to. Mr. Scoville knew about that.

Mr. McClintic: Mr. Scoville became ill and had to leave.

The Special Master: Of course we are very sorry, but we cannot help that. Do you feel authorized to say that $344,000 is correct?

Mr. McClintic: I could not say.

The Special Master: Mr. Dixey agrees to the $371,000, and there is deducted $27,000 for the original buildings—

Mr. McClintic: I presume that is correct. Mr. Dixey thinks that possibly there are some more buildings—

The Special Master: Suppose we have this entry made as to that. That item is agreed to subject to the right of West Virginia to show that there are additional credits that should be deducted from the item. Is that agreeable? 933

Mr. McClintic: Yes, sir.

The Special Master: The next item, "Gun House at Alexandria, $900." Is that agreed to as to amount?

Mr. Dixey: $900 is correct.

Mr. Anderson: Yes.

The Special Master: The amount of $900 is agreed to.

The next item is "Cannon House, Surry County, $110." Is that agreed to as to amount?

Mr. Dixey: That is correct as to amount.

The Special Master: The next is "Gun House for Richmond Artillery, Act of March 11, 1835, $1,079.09." Is that correct as to amount, and is it agreed to as to amount?

Mr. Dixey: That is correct as to amount.

The Special Master: The next item is "Sundries, B. P. W. Expenses, as follows: Legal expenses, $2,024.97."

Mr. Dixey: We do not agree as to that, by a small amount.

The Special Master: How much—less than $2,000?

Mr. Harrison: Why don't you agree?

Mr. Dixey: I cannot say immediately. We have $38,461.62.

The Special Master: You mean as the aggregate of those various items?

Mr. Dixey: I can explain—

Mr. Potter: $1,668.12 for the expenses of the agent to London. (Mr. Potter read some other figures from a memorandum.)

The Special Master: Then that leaves that amount?

Mr. Potter: Yes.

The Special Master: Then that is agreed to as to amount? 934
How about this interest on the public debt, amounting to $18,574,747.84. Is that agreed to as to amount?

Mr. Dixey: That is correct.

The Special Master: Now, are there any other items which Virginia claims which are not included in the schedule?

Mr. Anderson: No.

The Special Master: Are there any items which West Virginia claims which are not included in the schedule submitted at the previous hearing, that should be added to the schedule?

The question was, Brother Carlisle and Mr. Attorney General, whether under this paragraph there were any items that West Virginia claims should be taken into account in addition to those that they have in their schedules that we have just been over, items that Virginia claims should go in, and Mr. Dixey is inquiring—

Mr. Anderson: There are none to be included, none others to be included.

The Special Master: Then, so far as accounts are concerned, and items on those accounts and their amounts, the case is closed under Paragraph 4, and I am now ready to hear anything that may be offered by either party for the purpose of establishing their contention that these items should be included or should not be included, and Virginia may proceed.

[*Vol. 7. July 2, 1909. Relating to Trans-Alleghany Lunatic Asylum.*]

Mr. Anderson: The accountants have reconciled several of these items.

(At this point the witness, Judge McWhorter, was excused.)

The Special Master: Do you recollect the paragraph under which there were two items? 965

Mr. Dixey: I think one was $27,000.

The Special Master: And the other was $700—

Mr. Dixey: The $27,000 is correct, so far as it goes, but there were other buildings in there.

Mr. Harrison: This is schedule four, ordinary expenses.

Mr. Dixey: But it does not include all the buildings.

The Special Master: Now, as to that item, what is the reason—what schedule is that?

Mr. Harrison: That is schedule D-1.

[*Vol. 7. July 2, 1909. General discussion. Direct Examination of A. G. Potter.*]

The Special Master: The next paragraph, Schedule D, relates to the ordinary expenses. That was the paragraph as to which there were two items. Let me have that schedule. 978

(After examination of schedule). How about D now, Plaintiff's Substitute Exhibit D? Are you agreed on that, Mr. Dixey?

Mr. Dixey: Not including that item of the Eastern and Western Asylums, including that credit of $27,000. The credit is right, so far as it goes.

The Special Master: Just say that on Plaintiff's Substitute Exhibit D-1 the item of Indian defense in 1834, 1835, $754, is agreed to. Also let the record show that West Virginia contends that in the items relating to the Eastern and Western Asylums the total of $371,295.57 should be diminished by more than $27,000, because they contend that there was more than that expended in the construction of the original buildings that went into the first total.

Now, you have not been able, Mr. Dixey, to get your details, to state how much that would be?

Mr. Dixey: No, sir.

The Special Master: What do you say about there being additional buildings, Mr. Potter; have you investigated that?

Mr. Potter: Yes, sir.

The Special Master: Were you able to find anything additional in the line of original construction?

Mr. Potter: Not in the line of original construction, but 979
there were buildings added from time to time.

The Special Master: I suppose Mr. Dixey would contend that if they added a wing that would be in the nature of original construction?

Mr. Dixey: Yes, sir.

The Special Master: Now, take the $27,000, Mr. Dixey, that from time to time additions were made, which should be considered as the original construction. You say there were—

Mr. Potter: Yes, sir.

The Special Master: How much do you think they aggregate?

Mr. Potter: I cannot tell.

The Special Master: How much do you think, Mr. Dixey?

Mr. Dixey: A large sum; I could not say how much.

The Special Master: Well, what do you mean by a large sum?

Mr. Dixey: I could not tell you. We did not go into that.

The Special Master: We will not take time this morning to go over that.

Mr. Dixey: We can reconcile those later, Mr. Potter, and I can reconcile that.

The Special Master: That item is left with the understanding that Mr. Potter and Mr. Dixey report to the Master just exactly what those additional expenditures were, and the circumstances under which they were made, and that the Master will take the report made by them as to that item as the agreement of the parties, he to determine whether they are in the nature of an original expenditure and to be deducted. Of course you are to be heard 980
on that proposition. There is no sense in spending time discussing that. That is simply a question of judgment as to whether it is or is not. That is entirely for me to say, when we get to it. That takes care of that item.

The parties are bound by what these experts report to me, and I say whether the $27,000 shall be increased or not. That is just exactly as if we spent a week here talking about it, and just as good as to spend more time about it.

Now, then, take the next schedule.

Mr. Anderson: No; there is a very important matter there, the apportionment of the ordinary expenses of the government.

The Special Master: That is in the revised—

Mr. Anderson: No, sir—

The Special Master: Are these the results of the revised computation predicated upon the agreement entered into yesterday?

Mr. Anderson: No, a more important matter is this—

The Special Master: What is it?

Mr. Anderson: There was a misapprehension on the part of the accountants as to the principle upon which the apportionment shall be made, and the decree directs the apportionment to be made as to aggregate population and as to with and without slaves. 981

The Special Master. I do not make any apportionment; I simply report facts.

Mr. Anderson: The decree directs that apportionment be made as to population.

The Special Master: No, sir; I simply report the facts and what the decree does later on, none of us knows.

Mr. Anderson: I do not mean the court decided it.

Mr. Carlisle: You said they directed it to be done.

The Special Master: I report the amount of the ordinary expenses on the basis of the Virginia population with and without slaves. That is a matter of computation, as shown by the census.

Mr. Anderson: You have to make that?

The Special Master: Yes.

Mr. Anderson: The decree says it shall be done on the basis of the average total population of Virginia, with or without slaves.

Mr. Carlisle: Where?

Mr. Anderson: In the 4th Section.

Mr. Carlisle: It does not. We do not say on what basis it shall be made. The court may hereafter determine that.

Mr. Anderson: I do not say the court has decided which shall be done.

Mr. Carlisle: You did say that.

Mr. Anderson: I beg your pardon. The court has not decided anything upon that.

The Special Master: Please bring my attention to specific items.

Mr Anderson. The decree directs this apportionment to be made on the basis of average total population with and without slaves. Now, in making the computation and apportionment, 982 the accountant made the mistake of taking the census at the end of each decade; that is, for the years 1823 to 1830 he took the census for 1830; from 1830 to 1850 he took the census for 1840. The purpose of the court evidently was to come as nearly as possible to the actual population for each year for which these expenditures were made. Now, what the accountant has done, you will observe, is to ascertain the average population for each decade.

The Special Master: Here is a sheet of paper that you gave me, marked "Ordinary Expenses, March 23 to December 31, 1860," which is the schedule you are now discussing?

Mr. Anderson: Yes, sir.

The Special Master: Has this been submitted to the other side?

Mr. Anderson: No, sir. This was made up only last night.

The Special Master: So it has not been submitted long enough for them to tell whether it is correct or not. We do not have to discuss that, because the whole thing is a matter of computation and incompetent. What I have to say is that if Mr. Dixey can take that and make his computation and report to me whether he agrees—

Mr. McClintic: When he has time to go over it.

The Special Master: Surely. If he does not agree with Mr. Potter, I will get an expert and have him make a computation.

Now, is there anything else? I will ask the stenographer 983 to mark this paper.

(Papers handed to the stenographer were filed with the case and marked "West Virginia 1, West Virginia 2 and West Virginia 3.")

Mr. Harrison: We want Mr. Potter to take the stand to explain some of these things.

Whereupon:

ARTHUR G. POTTER,

a witness heretofore sworn in behalf of the plaintiff, was recalled for further examination:

By Mr. Harrison:

Q. You will observe that the Virginia schedule D-1 includes a number of items of expenditures in the State of West Virginia, which according—

Mr. Anderson: Do you mean ordinary expenses?

Q. (Continuing) I mean to say ordinary expenses of Government, which according to our view should be included.

The Special Master: I understand that was suspended yesterday so as to give you a chance.

Mr. Harrison: I would like Mr. Potter to explain the character and circumstances—

The Special Master: Sure. You may now state the reason why you include those items as a proper subject of charge under this, as a part of ordinary expenses of government. You can begin with the first item and go down through, or make a statement covering them all, if you can. Put it in your own way and give all the detail you think necessary, in order that I may have the information necessary to pass upon that question. Begin with 984 $353,123.96, tobacco receipts.

A. We ascertained that the tobacco warehouses controlled by the State were in the following places: Richmond and Petersburg;

Dinwiddie, Campbell, Prince Edward, Mecklenburg, Buckingham, Cumberland, Albemarle, Nelson and Pittsylvania counties, all counties within the present State of Virginia; and that the business being done in Virginia was a proper receipt for the State of Virginia and was not a credit to the ordinary expenses of government. West Virginia took credit for that by deducting from the ordinary expenses.

By the Special Master:

Q. Your contention is that ought not to appear on either side?

A. Yes, sir.

Q. Is that all that is to be said about that?

A. We have agreed as to the total—

Q. I understand that, but is that all that needs to be said in order to show what the record is?

Mr. Harrison: You may state briefly how those receipts are derived. No matter about that; you may cross that question out.

Mr. Carlisle: I would like to have that, then. We would like to know about that.

The Witness: They were receipts for inspection and storage of unmanufactured crop tobacco, whether stemmed or unstemmed; also for the sale of waste and sample tobacco or the tobacco remaining in the warehouse three years. 985

Mr. Carlisle: That is all on that.

The Special Master: They were paid out and afterwards reimbursed by the industry.

The Witness: There were no payments by the State except for the salaries of the inspectors.

Mr. McClintic: Were not the salaries of these inspectors paid and charged in the ordinary expenses?

A. I cannot say that. They were paid by the expenses. They were deducted from the figure that produces this net figure that you have deducted from your ordinary expenses.

By the Special Master:

Q. As I understand it, Virginia contends that this item of tobacco receipts, either disbursements or receipts, does not appear on either side of the account as you have stated it; you have elimimated it altogether?

A. Yes, sir.

Q. And therefore you think West Virginia ought not to be entitled to the credit?

A. Yes, sir.

The Special Master: On that item, have you any further cross examination, Mr. McClintic?

Mr. McClintic: The inspectors were paid by the State, were they not, and paid out of the salary fund?

The Witness: They were paid by any money that happened to be in the treasury. There was no salary fund, as I understand it.

Mr. McClintic: And that money that was paid to them is charged up in the ordinary expenses, is it not?

The Witness: Charged up in the salary account. 986

The Special Master: Although it may be that the State paid the salary of the inspectors of tobacco, and that was included in the first instance in the salary fund, in making that statement you have deducted from the salary fund as a charge the amounts thus paid to the inspectors of tobacco; is that right?

The Witness: Yes, sir.

The Special Master: So it does not appear in their account at all. What about the next item? Please take those items, Mr. Potter, and go through them.

The Witness: Expenses of Constitutional Convention.

The Special Master: Is there anything that needs to be said about that except that it was a constitutional convention to revise the constitution of the State? I suppose I may take judicial notice of that fact?

Mr. Harrison: Two conventions; one of 39-40 and one of 49-50.

The Special Master: Is there anything to say about that, except that there were two conventions?

Mr. Harrison: No.

The Special Master The next item is "Cost of Slaves Transported and Executed." Does not that item speak for itself and show what it was for?

The Witness: Yes, sir.

The Special Master: Of course I will assume that the State was transporting and attending to these slaves. 987

Mr. Carlisle: And the question is whether it was on ordinary expense.

The Special Master: Yes. Unless there is some special fact that should be in the record, we will not have to spend any time on that.

Mr. Anderson: There is nothing except what appears in the Statutes.

The Special Master: Very well.

The next is "Boundary Line." I suppose that was money expended for the boundary line?

The Witness: Several boundary line disputes.

The Special Master: It does not make any difference how many there were; I suppose that speaks for itself. That is all there is of that. I do not think there is anything to be added to that.

The next is "Maps." Commonwealth and Board of Public Works.

I suppose they used a lot of maps and the State paid for them. Is there anything more than that to be said about that?

The Witness: Those were maps—

Mr. McClintic: Big State maps, were they not?

The Witness: Yes, sir.

Mr. Carlisle: They were maps made in connection with the development of the State.

The Special Master: Maps that were thought to be necessary to properly develop the work under the control of the Board of Public Works.

Mr. McClintic: What I wanted to add was that these were State maps, maps of the whole State.

Mr. Harrison: Yes. 988

The Special Master: Well, the maps were State wide and covered the whole State.

The Witness: I don't know that I can state that positively. There may have been some county maps.

The Special Master: Well, it is more to your interest that they cover the whole State. The next item is "Deaf, Dumb and Blind Institution, 1845 to 1860." What is there to say about that?

Mr. Harrison: That has nothing to do with the original cost.

The Special Master: I understand this is a matter of improvements and additions to buildings?

Mr. Anderson: And enlargements.

The Special Master: Of course, that will raise the question as to whether it is an investment in the plant or a matter to be taken into account in the maintenance of the plant. The next is "International Exchanges."

The Witness: That was an amount appropriated for expenses in connection with the exchange of books, works of art, and agricultural implements with foreign governments, 1849 to 1860.

The Special Master: That is justified, I suppose, by the accumulation of public intelligence, which Virginia received as a matter of courtesy from these countries. Can you add anything to that?

Mr. Carlisle: I suppose not.

The Special Master: Does that state the facts?

Mr. Carlisle: So far as we know.

The Special Master: That cleans that up. The next is "Over- 989
payment of Treasury Note, $50." What is that; did they pay a note twice?

Mr. Potter: I don't know that it was one note, but there was a difference of $50 after all the notes had been paid.

The Special Master: They paid it and did not recover it back; is that it?

Mr. Potter: Yes, sir.

The Special Master: Printing treasury notes. Does not that explain itself?

Mr. Potter: That is the cost of printing the treasury notes, yes.

The Special Master: Loss on account of counterfeit money. Can anything be added to that; does that not explain itself?

Mr. Potter: Except the money was received from the Northwestern and Merchants and Mechanics Banks at Wheeling, being moneys received by the treasurer.

The Special Master: When?

Mr. Potter: 1859.

The Special Master: And it turned out that that was counterfeit?

Mr. Potter: And has been charged as a loss in the ordinary expenses.

The Special Master: The State did not collect it. Of course that left the bank liable for it. As a matter of fact, the State lost it and did not collect it. Is that all of that?

Mr. Potter: Yes, sir.

The Special Master: Virginia Military Institute, Additions and Improvements to Buildings, $151,000. Is that criticised because the aggregate, $151,000, may include what would be additions as well as improvements; or is that sufficiently intelligible? 990

Mr. McClintic: It is all buildings, is it not, Mr. Potter?

Mr. Potter: It is buildings, yes. They were all additional buildings.

The Special Master: Then when you say improvements there, all you mean to say is that the addition thus made was an improvement on the original plant?

Mr. Potter: Yes, sir.

The Special Master: It is admitted it was an addition to the buildings?

Mr. Potter: Some of them were very small.

The Special Master: It is a matter of no consequence about their size—

Mr. Conrad: This was a mess hall added to the Institute.

The Special Master: It is quite immaterial what it was.

Mr. Anderson: That was only part of it.

The Special Master: A designation adds nothing to it. Your contention is it ought not to be allowed, and their contention is it should be allowed. Your proposition, Brother Carlisle, is that it was an addition to property which was an investment. I suppose that is your contention. That takes care of that item. The next is University of Virginia; Water Supply. 991

Mr. Potter: An appropriation for the University of $25,000 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water.

The Special Master: Was there a system of water works constructed for the use of the University of Virginia?

Mr. Potter: Yes.

The Special Master: That covers that, then. The only question is whether that is a maintenance charge or an additional charge. Have you any suggestions to make, Brother McClintic?

Mr. McClintic: No, sir.

The Special Master: Brother Anderson?

Mr. Anderson: No, sir.

The Special Master: Improvements Public Square and Improvements Capitol Square. I suppose that is just what the heading shows?

Mr. Potter: Yes. That should read Capitol Square, Governor's Mansion, and so forth.

The Special Master: When you say improvements in Public Square and improvements in Capitol Square, do you mean to say that is simply a question of repairing, keeping in order, or an addition?

Mr. Potter: Here are the items under the second division (referring to memorandum) 1825, for a guard house; 1834 for grading the grounds around the Capitol Square; 1838, water system; 1851, gas system; 1855, approaches—

The Special Master: What are you giving—the years or the amounts? Taking the amounts that make the aggregate $1,456,091, I wish you would tell what they are for, and give the 992 amounts that make up the $12,247.

Mr. Potter: I was giving the amounts of the $12,247. I have not the details of that other amount.

The Special Master: If you have not, you will submit that later, and submit it for their inspection?

Mr. Potter: These amounts have been agreed on with them.

The Special Master: I understand, but what I want is this. I suppose both of you may want to discuss the question of whether they may be called a maintenance charge or not. In order to give that, we may want the details showing just what was done. For instance, if any of the money was expended by the acquisition of additional land, that might be one thing. If it was expended for the purpose of keeping in repair during that year, that might be quite another thing. Mr. Dixey, you notice what I say about that. You will have no trouble about that?

Mr. Dixey: None at all.

The Special Master: The next is "Fugitive Slave Expenses."

Mr. Dixey: For the arrest of fugitive slaves.

Mr. Harrison: That explains itself.

The Special Master: Have you any suggestion about that, Mr. Potter?

Mr. Potter: Some part of that may be for the apprehension of fugitive slaves in other States.

The Special Master: That distinction is not worth discussing. That is the sum that was spent for apprehending fugitive slaves in Virginia and some outside Virginia. To my mind that is of no consequence, the question as to where they were arrested. I 993
do not think the geographical location of the expenditure would cut any figure whatever in that. Is there anything to be added there? If not, that is enough about that. The next is "Reward, Additional." That is in connection with the same thing, I suppose?

Mr. Potter: Reward for information leading to the conviction of persons carrying off slaves.

The Special Master: That is, rewards paid to people in connection with the enforcement of the fugitive slave law?

Mr. Potter: Yes.

The Special Master: Can there be anything added to that? If not, that is all we want about that. That settles that matter. Now, going to the next one. "Penitentiary Lot and New Hospital Building." Is that all that can be said about it?

Mr. Potter: Yes.

The Special Master: Is there anything further on that, Mr. Potter? If not, we will pass to the next item. "Items of Indian Defense in 1834-1835;" and the next "Calling out Militia at Wheeling in 1838." Can anything be added to that?

Mr. Potter: I think not.

The Special Master: Can you suggest anything that minimizes it? That is 1834, 1835 and 1838.

Mr. Potter: Do not confuse those two. Calling out the militia at Wheeling in 1838 is $1,099.

The Special Master: I am not confusing them. I am simply 994
saying there was $754 expended in 1834 and 1835 in defending against the Indians.

Mr. Carlisle: It was not paid until then, I suppose, although the occasion of the expenditure may have occurred long before then.

Mr. Potter: All I know is the payment was made then.

The Special Master: And the service rendered was sometimes anterior to that. Is there anything to be added to that? If not, we will pass to the next. "Calling out Militia at Wheeling in 1838."

Mr. Potter (reading from memorandum): "For which they should receive the usual pay of the militia when they were in actual service, etc."

The Special Master: Is there anything to be added to that? If

not, we will go to the next item. "Medical College of Virginia, Additions and Improvements to Buildings, etc."

Mr. Potter (again referring to memorandum): "The Act creates, etc. (reading) "the hospital and infirmary for extending the college buildings."

The Special Master: That is undoubtedly additional.

Mr. Potter: The Act is March 1, 1860.

The Special Master: Improvements is used there for suggesting that the addition was an improvement, because, technically speaking, it was an addition. That is $25,000. The next is "Attorney General's Fees prosecuting Selden, Withers & Company." Who were Selden, Withers & Company?

Mr. Carlisle: They were defaulters, New York bankers.

Mr. Anderson: That means prosecuting a claim against 995
them, not criminally.

The Special Master: I understand.

Mr. Potter: It was paid under the Act of December 25, 1859, I think.

Mr. Anderson: And this was paid for conducting the lawsuit.

Mr. Potter: That is right.

The Special Master: The next is "Eastern and Western Asylums; Additions and Improvements to Buildings, etc., $363,845.56;" and "Support, $7.450.01;" making a total of $371,295.57. What is that "Support?"

Mr. McClintic: That is a question that is under dispute. We were speaking about that awhile ago.

The Special Master: The support proposition?

Mr. McClintic: No—

The Special Master: "Additions and Improvements to Buildings, etc., $363,845.56." Are those the same kind of additions involved in these other items?

Mr. Potter: Yes, sir; but the item of support—

The Special Master: I will come to that in a moment. That is all there is to be said about that; so far as they are called improvements it is in the sense that an addition is an improvement. Now, "Support," what is that for?

Mr. Potter: For annual support the State appropriated so much each year.

The Special Master: The annual appropriations in the maintenance of this institution. Do you agree to that?

Mr. McClintic: That is correct.

Mr. Potter: I think it is merely an omission on the part of 996
our friends.

The Special Master: There is an opportunity for repentance, between now and the argument, and they can make that confession if

they have a mind to; and if they do not make it and I decide against them, it can go in. The next is "Gun House at Alexandria" and "Cannon House, Surry county." I suppose that is the same sort of an investment, $110.

Mr. Potter: The same thing.

The Special Master: The next is "Gun House for Richmond Artillery, $1,079.09."

Mr. Potter: The same.

The Special Master: The next is "Sundry Board of Public Work Expenses, as follows." Is there anything to be added to any of these items except matters disclosed in the items themselves?

Mr. Potter: Not entirely. The printing of bonds is not the entire cost of printing bonds. As I understand it, the defendants have included the printing of registered bonds, and this is the printing of coupon bonds and the engraving of the coupon bonds.

The Special Master: That is, they have included the printing of the registered bonds, and you have included the printing of registered bonds and coupon bonds.

Mr. Potter: Yes.

The Special Master: Do you agree on that?

Mr. McClintic: We are handicapped by illness of Mr. Scoville on that.

The Special Master: I say this. Mr. Dixey may look that 997
up and if there is anything you want to call my attention to in reference to that, that may be done later. Is there anything else to be said about those items?

Mr. Potter: No, sir, I think not.

Mr. McClintic: No, sir.

The Special Master: As to those items, the case is closed. Now, let us take up the next paragraph, which is Paragraph No. 5, I think. As to that, I understand the experts have not been able to reach any result.

Mr. Carlisle: Before that, stated by the defendant's counsel on Exhibit C-1, on page 8—

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT E-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

E-1
Page 1

COMMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT E-1.

SUMMARY.

	Virginia.	West Virginia.
Assessed Valuation of Real Property as per latest obtainable Assessment Rolls, prior to June 20th, 1863	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863, (estimated in part)	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863	152,844,637.59	24,739,894.21
Total Amount of Income on which tax was levied as per latest obtainable Assessment Rolls, prior to June 20th, 1863	11,108,300.13	299.257.45
	$710,889,989.03	$113,142,996.70

The assessed valuation of Slaves for 1860 and 1861, not appearing on the original Assessment Rolls, it is agreed by the parties to this cause that in those counties for which no returns are found for 1862 and 1863, the number of slaves reported for 1860 and 1861 shall be taken and their value estimated on the basis of the average value of all Slaves in counties for which both number and value is reported in 1862 and 1863, making a separate calculation for each State.

Where number of slaves but no assessed valuation is reported in 1862 and 1863 the same average value as above is used.

We hereby certify that the within tables, consisting of pages 5 to 8 following, of which the above is a Summary, are taken from the original Assessment Rolls of the Commonwealth of Virginia, so far as available and from Auditors reports in other cases; that the said Summary is composed of items taken from the latest obtainable authentic sources of information prior to June 20th, 1863, and that the method adopted as above, of valuing the Slaves in those counties for which no value is shown in 1860 and 1861 is fair to both parties.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,469.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed Summary.....	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

Summary.

Plaintiff's Fair Estimated Valuation of Property, Real and Personal—		
In Virginia Counties, as above.....	$186,253,889.55	68.8636%
In West Virginia Counties, per contra.....	84,213,900.15	31.1364%
Total	$270,467,789.70	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 31.1364% as above		$11,767,756.77

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above named counties.	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these counties is 25% of this assessed valuation..		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		13,803,732.21	
(As per agreed summary....	$24,739,894.21)		16,537,772.71
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, in West Virginia Counties.....			$84,213,900.15

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Plaintiff's Alternative Method of Determining
uch Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia

At June 20th, 1863.

ternative Estimate of the Valuation of Real and Personal Property, Applying to the Assessed Valuation of Personal Property in Counties Dominated by the Wheeling Government, which it is Alleged is on a Greenback Basis, the Gold Value as at Date of Assessment, viz., February 1st, 1863, as Reported in Report of United States Treasury, Office of Government Actuary, Form II—Ed. 5-17-'95.

FAIR ESTIMATED VALUATION—VIRGINIA.			FAIR ESTIMATED VALUATION—WEST VIRGINIA.		
tal Valuation of Real Property at latest obtainable assessment as per agreed summary	$296,085,460.31		Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces ..... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20	
laintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15	Plaintiff claims that a fair estimate valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60
tal Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed summary	152,844,637.59		Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
laintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40	Plaintiff claims assessed valuation in these Counties is a fair estimated valuation		52,903,002.84
		$186,253,889.55	(As per agreed summary	$82,449,252.04)	$67,676,127.44
SUMMARY			Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above-named counties	$10,936,162.00	
laintiff's Fair Estimated Valuation of Property, Real and Personal:			Plaintiff claims that a fair estimated valuation of Personal Property in these Counties is 25% of this assessed valuation		$ 2,734,040.50
In Virginia Counties, as above	$186,253,889.55	70.2146%	Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
In West Virginia Counties, per contra	79,009,893.11	29.7854%	Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17
Total	$265,263,782.66	100 %			
tal Ordinary Expenses of Government laimed by Plaintiff from March 19th, 863, to December 31st, 1860, as per oint Exhibit D-1		$ 37,794,211.18			
which Plaintiff claims there is chargeable to West Virginia 29.7854% as above		$ 11,257,156.98			

Certified Correct:

ARTHUR G. POTTER,

PRICE, WATERHOUSE & CO.,

For the Plaintiff.

fendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at Fair Estimated Valuation, and ... so arrived at as

At June 20th, 1863.

ternative Estimate of the Valuation of Real and Personal Property, Applying to the Assessed Valuation of Personal Property in Counties Dominated by the Wheeling Government, which it is Alleged is on a Greenback Basis, the Gold Value as at Date of Assessment, viz., February 1st, 1863, as Reported in Report of United States Treasury, Office of Government Actuary, Form II—Ed. 5-17-'95.

FAIR ESTIMATED VALUATION—VIRGINIA.

tal Valuation of Real Property at latest obtainable assessment as per agreed summary	$296,085,460.31	
aintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
tal Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed summary	152,844,637.59	
aintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

SUMMARY

aintiff's Fair Estimated Valuation of Property, Real and Personal:		
In Virginia Counties, as above	$186,253,889.55	70.2146%
In West Virginia Counties, per contra	79,009,893.11	29.7854%
Total	$265,263,782.66	100 %

tal Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1863, to December 31st, 1860, as per Joint Exhibit D-1	$ 37,794,211.18
which Plaintiff claims there is chargeable to West Virginia 29.7854% as above	$ 11.257,156.98

Certified Correct:

ARTHUR G. POTTER,

PRICE, WATERHOUSE & CO.,

For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations :

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY.
For the Defendant.

FAIR ESTIMATED VALUATION—WEST VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces ..... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimate valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these Counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above-named counties	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these Counties is 25% of this assessed valuation		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17	
(As per agreed summary	$24,739,894.21)		11,333,765.67
Plaintiff's Fair Estimated Valuation of Property, Real and Personal in West Virginia Counties applying greenback value to Personal Property assessments			$79,009,893.11

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S ALTERNATIVE METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are included as Personal Property, notwithstanding the fact that they had been emancipated by President Lincoln's Proclamation.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.		
Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.....		$148,042,730.15
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary.	403,696,228.59	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
		$248,966,787.30

Summary.

Plaintiff's Fair Estimated Valuation of Property Real and Personal, with exceptions noted above:		
In Virginia, as above	$248,966,787.30	74.4085%
In West Virginia, per contra.....	85,627,548.40	25.5915%
	$334,594,335.70	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$37,794,211.18
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 25.5915% as above..... ..	$ 9,672,105.55

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.			
Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that the assessed valuation is a fair estimated valuation		13,803,732.21	
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia counties..	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00	
(As per agreed summary..	$30,394,487.21)		17,951,420.96
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exception noted above.			$85,627,548.40

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Plaintiff's Alternative Method of Determining
Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia.

At June 20th, 1863.

Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are Included as Personal Property, Notwithstanding the Fact That They Had Been Emancipated by President Lincoln's Proclamation; and also if Personal Property Assessment is Reduced From the Alleged Greenback Basis to Gold Basis at Rate Applying on February 1st, 1863, viz., 62.3% (as on Page 2a of This Exhibit.)

FAIR ESTIMATED VALUATION—VIRGINIA			FAIR ESTIMATED VALUATION—WEST VIRGINIA.		
Total Valuation of Real Property at latest obtainable assessment as per agreed Summary	$296,085,460.31		Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces	$29,546,249.20	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15			
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary	403,696,228.59		Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15			
		$248,966,787.30	Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.		$14,773,124.60
SUMMARY					
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, with exceptions noted above:			Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
In Virginia, as above	$248,966,787.30	75.5841%			
In West Virginia, per contra	80,423,541.36	24.4159%			
	$329,390,328.66	100 %	Plaintiff claims assessed valuation in these counties is a fair estimated valuation.		52,903,002.84
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$ 37,794,211.18	(As per agreed summary	$82,449,252.04)	$67,676,127.44
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 24.4159% as above		$ 9,227,796.81	Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00	
Certified Correct: ARTHUR G. POTTER. PRICE, WATERHOUSE & CO., For the Plaintiff			Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.			Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
Certified Correct as to figures and			Plaintiff claims that for the purposes of this Exhibit,		

From the Alleged Greenback Basis to Gold Basis at Rate Applying on February ...
Page 2a of This Exhibit.)

FAIR ESTIMATED VALUATION—VIRGINIA

Total Valuation of Real Property at latest obtainable assessment as per agreed Summary	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary	403,696,228.59	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
		$248,966,787.30

SUMMARY

Plaintiff's Fair Estimated Valuation of Property, Real and Personal, with exceptions noted above:		
In Virginia, as above	$248,966,787.30	75.5841%
In West Virginia, per contra	80,423,541.36	24.4159%
	$329,390,328.66	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$ 37,794,211.18
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 24.4159% as above		$ 9,227,796.81

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY,
For the Defendant.

FAIR ESTIMATED VALUATION—WEST VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces	$29,546,249.20	
Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.		$14,773,124.60
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
Plaintiff claims assessed valuation in these counties is a fair estimated valuation.		52,903,002.84
(As per agreed summary	$82,449,252.04)	$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis, a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17
Total Valuation of Slaves at latest obtainable assess-		

assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia Counties.....	1,805,796.00	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00
(As per agreed summary	$30,394,487.21)	12,747,413.92
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exceptions noted above		$80,423,541.36

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

DEFENDANT'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia, on the basis of the Fair Estimated valuations of the Property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

	Virginia.	West Virginia.
Assessed Valuation of Real Property at latest obtainable assessment, as per agreed Summary	$296.085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves at latest obtainable assessment, as per agreed Summary	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves, at latest obtainable assessment, as per agreed Summary	152,844,637.59	24.739,894.21
Total amount of Income on which tax was levied, at latest obtainable assessment, as per agreed Summary	11,108,300.13	299.257.45
Total	$710,889,989.03	$113.142,996.70

Defendant claims that the assessed valuation here shown is a Fair Estimated Valuation to be used as the basis for the division of the Ordinary Expenses of Government, viz.:

Virginia	$710,889,989.03	86.2696%
West Virginia	113,142,996.70	13.7304%
	$824,032,985.73	100 %

Defendant further claims that the Ordinary Expenses of Government from March 19th, 1823, to December 31st, 1860, amount to $18,207,684.29

as shown in Joint Exhibit D-1, and that the amount to be charged to West Virginia is 13.7304% as above..... $ 2,499,987.88

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being used as a FAIR ESTIMATE of the valuation; objects to the inclusion of income, on which tax is levied, as Personal Property; objects to Slaves being considered Personal Property; objects to the use of the percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified correct as to figures and calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

County.	1860				1861			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.
	Number.	Value.			Number.	Value.		
VIRGINIA:								
Accomac	2,645	.....	$ 1,353,505.00	$ 7,693.00	2,739	.....	$ 1,354,953.60	$ 3,822.00
Albemarle	.....	.....	.....	.....	7,449	.....	2,626,742.00	116,956.00
Alexandria	709	.....	816,186.00	161,521.45	709	.....	816,186.00	160,900.45
Alleghany	589	.....	355,465.00	27,510.00	522	.....	380,427.00	16,986.00
Amelia	4,269	.....	979,016.00	35,738.00	4,195	.....	1,017,215.00	14,840.00
Amherst	3,211	.....	761,320.00	9,539.00	3,405	.....	882,485.00	7,080.00
Appomattox	2,444	.....	661,245.00	14,315.00	2,526	.....	711,061.00	6,340.00
Augusta	2,545	.....	3,052,439.00	12,310.00	2,587	.....	3,133,015.00	10,015.00
Staunton	.....	.....	.....	.....	441	.....	435,404.08	43,366.00
Bath	475	.....	425,836.00	2,875.00	517	.....	384,645.00	.....
Bedford	5,303	.....	2,115,884.00	9,592.00	5,660	.....	2,011,160.00	8,422.00
Bland	.....	.....	.....	.....	113	.....	154,400.00	.....
Botetourt	1,728	.....	1,044,030.00	20,093.43	1,671	.....	1,001,191.00	13,313.12
Brunswick	5,209	.....	1,412,920.00	15,283.00	5,381	.....	1,442,560.00	7,754.00
Buchanan	14	.....	81,548.00	.....	13	.....	84,904.00	.....
Buckinghan	4,827	.....	933,423.00	21,310.00	4,866	.....	838,847.00	12,114.00
Campbell	4,932	.....	1,452,167.00	150,927.00	4,981	.....	1,571,830.00	115,157.00
Lynchburg	1,822	.....	984,599.00	242,409.00	1,611	.....	1,078,978.00	148,148.00
Caroline	6,029	.....	1,460,978.00	19,540.00	6,074	.....	1,490,234.00	1,744.00
Carroll	65	.....	156,233.87	.....	104	.....	290,028.93	300.00
Charles City	1,783	.....	405,592.00	13,858.00	1,877	.....	434,720.00	7,301.00
Charlotte	5,489	.....	1,562,782.00	39,456.00	5,560	.....	1,509,757.00	17,080.00
Chesterfield	.....	.....	.....	.....	.....	.....	.....	.....
Clarke	1,834	.....	748,762.00	4,018.00	1,798	.....	720,928.00	2,190.00
Craig	215	.....	262,376.00	.....	225	.....	253,431.00	.....
Culpeper	3,245	.....	928,245.00	18,561.00	3,259	.....	1,046,014.00	7,923.00
Cumberland	3,899	.....	937,357.00	37,125.00	3,834	.....	808,050.00	6,254.00
Dinwiddie	3,918	.....	814,161.00	13,665.00	4,010	.....	810,776.00	6,100.00
Petersburg	3,538	.....	2,520,019.00	626,747.00	3,453	.....	2,754,673.00	199,288.00
Elizabeth City	.....	.....	.....	.....	1,196	.....	334,069.00	2,680.00
Essex	3,921	.....	1,062,457.62	44,483.85	3,873	.....	1,005,861.30	14,278.00
Fairfax	1,607	.....	804,195.00	30,343.00	1,611	.....	899,020.00	13,656.00
Fauquier	5,025	.....	2,578,876.00	7,621.00	5,016	.....	2,544,018.00	6,335.00
Floyd	224	.....	305,154.00	3,721.00	244	.....	271,282.00	.....
Fluvanna	2,877	.....	801,182.00	12,121.00	2,883	.....	753,155.00	5,200.00
Franklin	3,330	.....	1,237,755.00	2,327.00	3,394	.....	1,137,392.00	44.00
Frederick	844	.....	1,096,876.00	8,092.00	824	.....	1,666,656.00	1,036.00
Winchester	330	.....	669,739.00	40,754.80	342	.....	1,060,637.00	23,972.80
Giles	444	.....	390,735.00	1,925.00	438	.....	373,820.00	2,000.00
Gloucester	3,038	.....	723,846.00	5,675.00	3,053	.....	653,340.00	3,319.00
Carried forward.....	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37

1862				1863				Total of Latest Ac		
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.
Number.	Value.			Number.	Value.			Number.	Value.	
2,643	.....	$ 1,008,285.00	$ 850.00	2,263	.....	$ 971,261.00	$ 1,020.00	2,263	$ *1,135,121.00	$ 971,261.00
12,681	$ 3,906,845.00	3,073,022.00	109,016.00	12,916	$ 7,647,305.00	4,212,185.00	201,569.00	12,916	7,647,305.00	4,212,185.00
149	.....	429,121.45	23,201.24	.....	.....	371,202.45	5,250.00	.....	.....	371,202.45
659	259,580.00	371,595.00	4,682.00	677	484,935.00	617,220.00	3,190.00	677	484,935.00	617,220.00
7,172	2,453,900.00	1,000,325.00	12,980.00	7,538	5,840,450.00	1,524,152.00	17,997.00	7,538	5,840,450.00	1,524,152.00
5,860	2,004,545.00	980,975.00	9,546.00	6,368	4,839,000.00	1,798,230.00	6,091.19	6,368	4,839,000.00	1,798,230.00
4,276	1,707,240.00	785,959.00	4,588.00	4,446	3,350,375.00	1,216,929.00	13,334.00	4,446	3,350,375.00	1,216,929.00
4,430	1,760,685.00	3,433,132.00	7,201.00	4,515	3,930,430.00	6,078,024.00	73,864.50	4,515	3,930,430.00	6,078,024.00
734	339,400.00	486,229.00	34,552.00	749	630,890.00	831,077.00	130,348.00	749	630,890.00	831,077.00
781	298,375.00	405,285.00	.....	740	521,407.00	641,091.00	200.00	740	521,407.00	641,091.00
9,135	2,836,934.00	1,952,789.00	4,557.92	9,623	4,825,805.00	2,886,851.00	54,269.00	9,623	4,825,805.00	2,886,851.00
273	92,370.00	254,156.00	.....	252	163,850.00	435,115.00	.....	252	163,850.00	435,115.00
1,852	909,756.00	1,104,465.00	8,650.00	2,671	1,966,055.00	1,681,013.00	8,327.00	2,671	1,966,055.00	1,681,013.00
9,212	3,564,725.00	1,477,460.00	7,311.00	9,479	6,819,700.00	1,847,050.00	11,849.00	9,479	6,819,700.00	1,847,050.00
29	10,300.00	94,645.00	.....	33	17,500.00	142,252.00	.....	33	17,500.00	142,252.00
8,104	2,457,025.00	882,716.00	10,649.00	7,096	5,062,000.00	1,346,710.00	13,585.00	7,096	5,062,000.00	1,346,710.00
8,175	2,961,200.00	1,594,054.00	100,684.00	8,524	6,336,915.00	3,022,783.00	89,508.00	8,524	6,336,915.00	3,022,783.00
1,502	546,100.00	1,334,867.50	92,911.60	1,722	1,482,500.00	5,156,421.00	819,025.00	1,722	1,482,500.00	5,156,421.00
10,389	3,510,767.00	1,579,549.00	6,712.00	8,554	5,974,572.00	2,490,952.00	9,238.36	8,554	5,974,572.00	2,490,952.00
258	91,420.00	336,919.00	.....	280	143,990.00	426,303.00	.....	280	143,990.00	426,303.00
3,643	1,104,370.00	477,720.00	7,641.90	1,784	596,895.00	486,689.00	7,564.80	1,784	596,895.00	486,689.00
9,245	3,102,447.00	1,474,850.00	16,385.00	9,589	6,596,820.00	2,020,267.00	21,019.00	9,589	6,596,820.00	2,020,267.00
.....	.....	.....	.....	7,671	5,722,220.00	1,760,777.00	27,337.00	7,671	5,722,220.00	1,760,777.00
2,623	916,545.00	744,163.00	700.00	.....	.....	.....	.....	2,623	916,545.00	744,163.00
390	139,705.00	277,120.00	.....	447	275,775.00	429,280.00	2,000.00	447	275,775.00	429,280.00
4,587	2,044,436.00	1,079,756.00	4,724.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,253	1,902,550.00	1,476,177.50
6,331	1,917,150.00	869,315.00	.....	6,537	4,605,600.00	1,184,638.00	.....	6,537	4,605,600.00	1,184,638.00
6,486	2,362,630.00	868,333.00	2,000.00	6,515	4,400,087.00	1,011,982.00	4,800.00	6,515	4,400,087.00	1,011,982.00
4,024	1,893,595.00	2,956,881.00	175,707.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	4,203	4,219,950.00	6,177,730.00
.....	.....	.....	.....	....	.....	.....	.....	1,196	* 599,914.00	334,066.00
6,472	1,958,465.00	945,763.98	14,172.00	6,265	1,904,900.00	1,291,389.03	14,526.00	6,265	1,904,900.00	1,291,389.03
.....	.....	.....	.....	.....	.....	.....	.....	1,611	* 808,078.00	899,020.00
.....	.....	.....	.....	.....	.....	.....	.....	5,016	*2,516,026.00	2,544,015.00
374	152,050.00	363,880.00	.....	493	372,300.00	744,784.00	6,478.00	493	372,300.00	744,784.00
4,781	1,737,141.00	831,592.00	2,800.00	5,107	3,910,900.00	1,393,673.00	15,168.00	5,107	3,910,900.00	1,393,673.00
5,987	1,934,000.00	1,161,237.00	.....	6,262	4,230,100.00	1,754,029.00	500.00	6,262	4,230,100.00	1,754,029.00
715	281,300.00	525,825.00	2,300.00	.....	.....	.....	.....	715	281,300.00	525,825.00
428	180,900.00	1,045,582.00	16,848.00	.....	.....	.....	.....	428	180,900.00	1,045,582.00
708	246,200.00	356,005.00	950.00	651	290,025.00	511,210.00	700.00	651	290,025.00	511,210.00
.....	.....	.....	.....	.....	.....	.....	.....	3,053	*1,531,385.00	653,340.00
145,108	$49,682,101.00	$36,563,172.93	$682,319.66	147,223	$99,065,801.00	$57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$64,685,463.00

* This value is based on the average value of the total number of slaves in counties for which both nu

1863				Total of Latest Assessment.					County.
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.				
2,263	.....	$ 971,261.00	$ 1,020.00	2,263	$ *1,135,121.00	$ 971,261.00	$ 1,020.00	$ 3,006,019.01	Accomac
12,916	$ 7,647,305.00	4,212,185.00	201,569.00	12,916	7,647,305.00	4,212,185.00	201,569.00	7,521,011.47	Albemarle
.....	.....	371,202.45	5,250.00	.....	.....	371,202.45	5,250.00	4,246,781.48	Alexandria
677	484,935.00	617,220.00	3,190.00	677	484,935.00	617,220.00	3,190.00	886,218.89	Alleghany
7,538	5,840,450.00	1,524,152.00	17,997.00	7,538	5,840,450.00	1,524,152.00	17,997.00	2,227,607.77	Amelia
6,368	4,839,000.00	1,798,230.00	6,091.19	6,368	4,839,000.00	1,798,230.00	6,091.19	2,285,852.00	Amherst
4,446	3,350,375.00	1,216,929.00	13,334.00	4,446	3,350,375.00	1,216,929.00	13,334.00	1,517,274.47	Appomattox
4,515	3,930,430.00	6,078,024.00	73,864.50	4,515	3,930,430.00	6,078,024.00	73,864.50	10,447,385.19	Augusta
749	630,890.00	831,077.00	130,348.00	749	630,890.00	831,077.00	130,348.00	.....	Staunton
740	521,407.00	641,091.00	200.00	740	521,407.00	641,091.00	200.00	1,022,626.72	Bath
9,623	4,825,805.00	2,886,851.00	54,269.00	9,623	4,825,805.00	2,886,851.00	54,269.00	4,915,374.34	Bedford
252	163,850.00	435,115.00	.....	252	163,850.00	435,115.00	.....	677,408.17	Bland
2,671	1,966,055.00	1,681,013.00	8,327.00	2,671	1,966,055.00	1,681,013.00	8,327.00	3,093,896.88	Botetourt
9,479	6,819,700.00	1,847,050.00	11,849.00	9,479	6,819,700.00	1,847,050.00	11,849.00	1,571,475.99	Brunswick
33	17,500.00	142,252.00	.....	33	17,500.00	142,252.00	.....	145,260.55	Buchanan
7,096	5,062,000.00	1,346,710.00	13,585.00	7,096	5,062,000.00	1,346,710.00	13,585.00	2,419,172.74	Buckingham
8,524	6,336,915.00	3,022,783.00	89,508.00	8,524	6,336,915.00	3,022,783.00	89,508.00	6,072,524.78	Campbell
1,722	1,482,500.00	5,156,421.00	819,025.00	1,722	1,482,500.00	5,156,421.00	819,025.00	.....	Lynchburg
8,554	5,974,572.00	2,490,952.00	9,238.36	8,554	5,974,572.00	2,490,952.00	9,238.36	3,451,136.32	Caroline
280	143,990.00	426,303.00	.....	280	143,990.00	426,303.00	.....	827,284.23	Carroll
1,784	596,895.00	486,689.00	7,564.80	1,784	596,895.00	486,689.00	7,564.80	1,033,531.77	Charles City
9,589	6,596,820.00	2,020,267.00	21,019.00	9,589	6,596,820.00	2,020,267.00	21,019.00	3,393,480.56	Charlotte
7,671	5,722,220.00	1,760,777.00	27,337.00	7,671	5,722,220.00	1,760,777.00	27,337.00	3,944,786.00	Chesterfield
.....	.....	.....	.....	2,623	916,545.00	744,163.00	700.00	3,865,795.11	Clarke
447	275,775.00	429,280.00	2,000.00	447	275,775.00	429,280.00	2,000.00	870,973.94	Craig
3,253	1,902,550.00	1,476,177.50	34,919.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,271,412.76	Culpeper
6,537	4,605,600.00	1,184,638.00	.....	6,537	4,605,600.00	1,184,638.00	.....	2,127,944.91	Cumberland
6,515	4,400,087.00	1,011,982.00	4,800.00	6,515	4,400,087.00	1,011,982.00	4,800.00	2,427,991.10	Dinwiddie
4,203	4,219,950.00	6,177,730.00	2,176,281.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	6,604,014.00	Petersburg
.....	.....	.....	.....	1,196	* 599,914.00	334,069.00	2,680.00	1,032,933.00	Elizabeth City
6,265	1,904,900.00	1,291,389.03	14,526.00	6,265	1,904,900.00	1,291,389.03	14,526.00	2,095,105.24	Essex
.....	.....	.....	.....	1,611	* 808,078.00	899,020.00	13,656.00	5,028,362.73	Fairfax
.....	.....	.....	.....	5,016	*2,516,026.00	2,544,018.00	6,335.00	9,250,346.87	Fauquier
493	372,300.00	744,784.00	6,478.00	493	372,300.00	744,784.00	6,478.00	871,642.70	Floyd
5,107	3,910,900.00	1,393,673.00	15,168.00	5,107	3,910,900.00	1,393,673.00	15,168.00	2,160,783.87	Fluvanna
6,262	4,230,100.00	1,754,029.00	500.00	6,262	4,230,100.00	1,754,029.00	500.00	2,506,642.31	Franklin
.....	.....	.....	.....	715	281,300.00	525,825.00	2,300.00	5,681,169.61	Frederick
.....	.....	.....	.....	428	180,900.00	1,045,582.00	16,848.00	.....	Winchester
651	290,025.00	511,210.00	700.00	651	290,025.00	511,210.00	700.00	1,030,201.85	Giles
.....	.....	.....	.....	3,053	*1,531,385.00	653,340.00	3,819.00	1,936,241.88	Gloucester
147,223	$99,065,801.00	$57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$64,685,463.98	$3,816,295.85	$115,467,671.21	

*This value is based on the average value of the total number of slaves in counties for which both number and value is shown in 1862 and 1863.

County.	1860				1861			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.
	Number.	Value.			Number.	Value.		
Brought forward.....	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37
Goochland	3,507	.....	882,985.00	25,975.00	.....	.....	.....	.....
Grayson	280	.....	279,337.00	1,200.00	294	.....	320,568.00	200.00
Greene	981	.....	371,965.00	1,535.00	997	.....	359,706.00	768.00
Greensville	2,213	.....	438,850.00	450.00	2,280	.....	466,020.00	750.00
Halifax	8,696	.....	2,636,968.00	77,631.00	8,818	.....	2,602,942.00	33,507.00
Hanover	4,984	.....	1,408,020.00	30,737.00	5,115	.....	1,328,990.00	17,762.00
Henrico	3,860	.....	1,425,038.00	144,932.00	4,494	.....	1,386,853.00	68,944.68
Richmond	7,639	.....	4,073,365.00	605,795.43	6,474	.....	4,274,884.00	459,347.00
Henry	2,678	.....	845,159.00	6,827.00	2,779	.....	813,485.00	2,860.00
Highland	208	.....	314,790.00	1,200.00	219	.....	312,288.00	150.00
Isle of Wight.....	1,040	.....	447,528.00	8,620.00	2,148	.....	867,977.00	11,968.00
James City	1,141	.....	267,597.00	8,619.00	1,162	.....	287,899.00	2,712.00
Williamsburg	405	.....	276,220.00	25,743.00	410	.....	269,541.00	9,997.00
King and Queen.....	3,288	.....	912,999.00	4,532.00	3,406	.....	937,602.00	7,216.00
King George	2,066	.....	478,874.00	9,022.00	1,984	.....	513,311.00	7,280.00
King William	2,916	.....	423,670.00	6,970.00	3,248	.....	441,115.00	1,220.00
Lancaster	1,605	.....	313,610.00	4,350.00	1,583	.....	306,475.00	3,055.00
Lee	486	.....	699,153.00	2,320.00	481	.....	742,706.00	342.00
Loudoun	3,063	.....	2,590,444.00	34,478.40	3,000	.....	3,207,617.00	21,171.40
Louisa	5,429	.....	1,618,875.00	34,093.00	5,366	.....	1,663,795.00	17,013.00
Lunenburg	4,163	.....	926,401.00	3,147.00	4,212	.....	861,074.00	3,904.00
Madison	2,408	.....	1,156,079.00	9,462.56	2,373	.....	1,121,577.00	1,608.00
Matthews	1,507	.....	327,884.00	2,650.00	1,479	.....	343,250.00	800.00
Mecklenburg	7,392	.....	1,553,038.00	31,894.00	7,506	.....	1,642,462.00	28,225.00
Middlesex	1,526	.....	324,513.00	7,812.00	1,550	.....	347,625.00	3,657.00
Montgomery	1,141	.....	753,910.00	9,460.00	1,173	.....	780,915.00	3,890.00
Nansemond	2,571	.....	1,005,005.00	17,804.00	2,677	.....	1,036,998.00	12,228.00
Nelson	3,215	.....	569,377.00	3,160.00	3,158	.....	531,572.00	1,377.00
New Kent	1,780	.....	320,945.00	5,706.20	1,808	.....	316,990.00	5,771.00
Norfolk	2,887	.....	654,166.00	14,305.00	2,751	.....	619,528.00	8,441.28
Norfolk City	1,997	.....	1,298,477.50	271,297.00	1,951	.....	1,258,780.00	164,856.00
Portsmouth	736	.....	232,765.00	51,508.00	689	.....	248,455.00	57,939.00
Northampton	.....	.....	.....	.....	2,250	.....	642,880.00	2,494.00
Northumberland	1,733	.....	426,450.00	650.00	1,823	.....	417,340.00	.....
Nottoway	3,856	.....	854,726.00	19,564.00	3,953	.....	859,740.00	14,602.00
Orange	3,309	.....	779,770.00	10,469.00	3,486	.....	819,151.00	7,440.00
Page	495	.....	867,587.00	6,224.00	483	.....	860,453.00	1,569.00
Patrick	1,026	.....	527,418.00	4,659.00	1,024	.....	530,975.00	1,050.00
Pittsylvania	7,417	.....	2,104,281.00	21,541.00	7,171	.....	1,990,008.00	7,840.00
Danville	763	.....	268,746.00	31,451.00	573	.....	238,404.00	14,578.00
Carried forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73

1862				1863				Total of Late		
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.
Number.	Value.			Number.	Value.			Number.	Value.	
145,108	$ 49,682,101.00	$36,563,472.93	$ 682,319.66	147,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,[illegible].00	$ 64,685,463.
5,768	2,165,145.00	815,925.00	15,192.00	5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,[illegible].00	1,255,630.
551	187,550.00	396,525.00	1,200.00	579	417,525.00	789,990.00	300.00	579	417,[illegible].00	789,990.
1,838	545,525.00	374,200.00	.....	1,785	845,785.00	539,725.00	2,000.00	1,785	845,[illegible].00	539,725.
3,963	1,274,234.00	440,404.00	300.00	4,029	2,936,075.00	753,273.00	.....	4,029	2,936,[illegible].00	753,273.
14,770	5,338,625.00	2,638,665.00	22,397.00	15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,[illegible].00	3,304,526.
8,621	3,017,450.00	1,355,520.00	13,876.00	7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,[illegible].00	1,977,545.
6,557	2,534,345.00	1,841,535.00	58,235.77	7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,[illegible].00	2,651,135.
7,917	3,350,340.00	6,864,734.00	452,495.00	6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,[illegible].00	7,336,275.
4,978	1,633,430.00	862,235.00	2,300.00	5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,[illegible].00	1,411,336.
341	102,680.00	365,655.00	.....	279	77,450.00	405,433.00	40.00	279	77,[illegible].00	405,433.
1,643	601,750.00	466,225.00	7,626.00	.....	.....	.....	.....	1,643	601,[illegible].00	466,225.
.....	.....	.....	.....	.....	.....	.....	.....	1,162	* 582,[illegible].00	287,899.
.....	.....	.....	.....	.....	.....	.....	.....	410	* 205,[illegible].00	269,541.
5,882	1,592,590.00	941,985.00	8,765.00	5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,[illegible].00	1,242,571.
2,999	1,123,260.00	560,735.00	5,849.00	.....	.....	.....	.....	2,999	1,123,[illegible].00	560,735.
5,029	1,526,300.00	487,950.00	1,050.00	4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,[illegible].00	731,665.
2,340	710,670.00	297,175.00	.....	2,306	772,475.00	405,854.00	457.00	2,306	772,[illegible].00	405,854.
958	468,976.00	895,991.00	400.00	1,121	784,712.00	1,140,423.00	.....	1,121	784,[illegible].00	1,140,423.
.....	.....	.....	.....	.....	.....	.....	.....	3,000	*1,504,[illegible].00	3,207,617.
9,169	3,217,660.00	1,790,134.00	22,388.00	8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,[illegible].00	2,397,065.
7,219	2,636,663.00	959,409.00	1,945.00	7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,[illegible].00	1,210,225.
4,235	1,322,375.00	1,199,813.00	1,608.00	3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,[illegible].00	1,601,701.
2,110	599,090.00	318,030.00	800.00	.....	.....	.....	.....	2,110	599,[illegible].00	318,030.
12,481	3,818,238.00	1,552,399.00	12,672.00	13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,[illegible].00	2,748,784.
2,546	652,119.00	338,778.00	618.00	2,450	644,320.00	425,137.00	288.00	2,450	644,[illegible].00	425,137.
2,132	879,400.00	888,875.00	4,400.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,[illegible].00	1,526,377.
.....	.....	.....	.....	.....	.....	.....	.....	2,677	*1,342,[illegible].00	1,036,99[illegible].
5,356	1,306,830.00	520,321.00	1,662.00	5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,[illegible].00	978,71[illegible].
2,958	892,670.00	405,200.00	.....	1,852	1,115,725.00	519,072.00	.....	1,852	1,115,[illegible].00	519,07[illegible].
1,390	501,225.00	230,875.00	3,028.00	.....	.....	.....	.....	1,390	501,[illegible].00	230,87[illegible].
2,327	860,820.00	1,086,205.00	115,972.00	.....	.....	.....	.....	2,327	860,[illegible].00	1,086,20[illegible].
941	276,960.00	215,605.00	62,909.00	.....	.....	.....	.....	941	276,[illegible].00	215,60[illegible].
2,123	.....	582,199.00	1,920.00	1,870	.....	519,841.00	1,500.00	1,870	* 937,[illegible].00	519,84[illegible].
2,884	818,975.00	375,054.00	.....	2,731	780,393.00	438,316.00	2,160.00	2,731	780,[illegible].00	438,31[illegible].
6,342	2,373,533.00	860,331.00	12,210.00	6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,[illegible].00	1,136,13[illegible].
5,873	1,767,080.00	932,497.00	9,236.00	5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,[illegible].00	1,557,10[illegible].
944	355,960.00	932,654.00	695.00	725	280,435.00	1,275,110.00	8,240.00	725	280,[illegible].00	1,275,11[illegible].
1,872	663,395.00	578,840.00	.....	2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,[illegible].00	1,034,03[illegible].
12,362	4,377,479.00	2,103,801.00	14,210.00	13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,[illegible].00	3,097,59[illegible].
1,023	418,550.00	278,954.00	15,241.00	1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00	867,94[illegible].
305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,[illegible].00	$117,643,74[illegible].

1863				Total of Latest Assessment.					County
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
mber.	Value.			Number.	Value.				
17,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$ 64,685,463.98	$3,816,295.85	$115,467,671.21	
5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,700.00	1,255,630.00	10,656.00	2,698,185.52	Goochland
579	417,525.00	789,990.00	300.00	579	417,525.00	789,990.00	300.00	939,744.26	Grayson
1,785	845,785.00	539,725.00	2,000.00	1,785	845,785.00	539,725.00	2,000.00	961,860.60	Greene
4,029	2,936,075.00	753,273.00	.....	4,029	2,936,075.00	753,273.00	.....	768,704.12	Greensville
15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,360.00	3,304,526.00	137,833.00	5,245,749.29	Halifax
7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,600.00	1,977,545.00	16,994.00	3,243,892.30	Hanover
7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,380.00	2,651,135.00	409,964.00	8,271,529.00	Henrico
6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,365.00	7,336,275.00	3,803,636.64	19,662,313.00	Richmond
5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,843.00	1,411,336.00	63,321.83	1,811,520.71	Henry
279	77,450.00	405,433.00	40.00	279	77,450.00	405,433.00	40.00	1,296,097.42	Highland
.....	.....	.....	.....	1,643	601,750.00	466,225.00	7,626.00	1,407,738.36	Isle of Wight
.....	.....	.....	.....	1,162	* 582,859.00	287,899.00	2,712.00	1,102,552.98	James City
.....	.....	.....	.....	410	* 205,656.00	269,541.00	9,997.00	.....	Williamsburg
5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,895.00	1,242,571.00	11,936.00	1,764,398.74	King and Queen
.....	.....	.....	.....	2,999	1,123,260.00	560,735.00	5,849.00	1,544,464.85	King George
4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,550.00	731,665.00	3,700.00	1,729,586.10	King William
2,306	772,475.00	405,854.00	457.00	2,306	772,475.00	405,854.00	457.00	981,261.00	Lancaster
1,121	784,712.00	1,140,423.00	.....	1,121	784,712.00	1,140,423.00	.....	1,633,215 73	Lee
.....	.....	.....	.....	3,000	*1,504,800.00	3,207,617.00	21,171.40	11,684,915 00	Loudoun
8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,915.00	2,397,065.00	24,707.00	3,544,387 57	Louisa
7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,275.00	1,210,225.00	2,782.00	1,598,421 72	Lunenburg
3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,505.00	1,601,701.00	10,107.33	2,150,811 93	Madison
.....	.....	.....	.....	2,110	599,090.00	318,030.00	800.00	777,059 78	Matthews
13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,030.00	2,748,784.00	100,206.50	3,530,539 87	Mecklenburg
2,450	644,320.00	425,137.00	288.00	2,450	644,320.00	425,137.00	288.00	870,729.64	Middlesex
2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,729,449 75	Montgomery
.....	.....	.....	.....	2,677	*1,342,783.00	1,036,998.00	12,228.00	1,770,113.08	Nansemond
5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,892.00	978,717.00	19,426.00	2,694,440.00	Nelson
1,852	1,115,725.00	519,072.00	.....	1,852	1,115,725.00	519,072.00	.....	926,208.29	New Kent
.....	.....	.....	.....	1,390	501,225.00	230,875.00	3,028.00	2,918,682.83	Norfolk
.....	.....	.....	.....	2,327	860,820.00	1,086,205.00	115,972.00	5,749,810.86	Norfolk City
.....	.....	.....	.....	941	276,960.00	215,605.00	62,909.00	2,090,080.00	Portsmouth
1,870	.....	519,841.00	1,500.00	1,870	* 937,992.00	519,841.00	1,500.00	1,397,328.00	Northampton
2,731	780,393.00	438,316.00	2,160.00	2,731	780,393.00	438,316.00	2,160.00	1,219,354.00	Northumberland
6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,725.00	1,136,136.00	11,880.00	1,964,321.92	Nottoway.
5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,025.00	1,557,107.00	41,813.00	2,805,006.00	Orange
725	280,435.00	1,275,110.00	8,240.00	725	280,435.00	1,275,110.00	8,240.00	2,140,857.54	Page
2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,065.00	1,034,030.00	1,800.00	1,201,441.00	Patrick
13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,754.00	3,097,599.00	171,200.00	4,782,153.21	Pittsylvania
1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00	867,949.50	1,007,359.28	770,158.00	Danville
1,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$9,946,175.83	$229,853,755.18	

County.	1860				1861			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.
	Number.	Value.			Number.	Value.		
Brought forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73
Powhatan	3,177	.....	789,892.00	11,487.00	3,156	.....	781,924.00	4,593.00
Prince Edward	4,352	.....	1,035,329.00	41,213.00	4,279	.....	963,827.00	18,096.00
Prince George	2,894	.....	787,372.00	18,209.00	2,926	.....	895,394.00	10,121.00
Prince William	1,269	.....	615,710.00	14,734.80	1,243	.....	578,707.00	8,514.80
Princess Anne	1,818	.....	562,412.00	12,825.00	224	.....	563,823.00	.....
Pulaski	918	.....	765,562.00	5,250.00	928	.....	754,557.00	950.00
Rappahannock	1,721	.....	566,869.00	802.00	1,748	.....	643,857.00	1,150.00
Richmond	1,373	.....	361,865.61	3,175.00	1,384	.....	336,457.92	1,759.00
Roanoke	1,603	.....	879,608.00	18,778.00	1,580	.....	977,989.00	16,606.00
Rockbridge	2,328	.....	1,991,203.00	54,634.71	2,273	.....	1,924,718.81	28,630.21
Rockingham	1,268	.....	2,855,817.00	32,082.00	1,241	.....	2,793,172.50	14,407.00
Russell	516	.....	628,823.00	700.00	573	.....	660,922.00	.....
Scott	324	.....	668,486.00	2,591.00	331	.....	661,765.00	2,017.00
Shenandoah	484	.....	1,408,887.00	4,755.00	457	.....	1,487,641.00	780.00
Smyth	508	.....	502,340.00	6,835.00	500	.....	500,160.00	5,570.00
Southampton	3,174	.....	1,287,193.00	11,157.00	3,141	.....	1,326,697.00	7,108.00
Spottsylvania	2,382	.....	1,066,307.00	17,451.90	3,409	.....	976,683.00	18,590.00
Fredericksburg	724	.....	698,492.00	75,965.00	685	.....	612,077.00	61,804.00
Stafford	1,575	.....	478,025.50	22,461.00	1,545	.....	441,672.50	22,209.00
Surry	1,552	.....	348,872.99	8,265.06	1,544	.....	349,580.40	4,725.00
Sussex	3,604	.....	801,725.00	4,398.82	3,598	.....	810,060.00	400.00
Tazewell	676	.....	566,828.00	6,911.00	670	.....	566,078.00	4,470.00
Warren	804	.....	548,143.00	5,640.00	822	.....	520,794.00	1,250.00
Warwick	602	.....	80,085.00	1,120.00	616	.....	90,080.00	1,120.00
Washington	1,319	.....	1,290,488.00	26,152.00	1,375	.....	1,455,589.00	16,135.00
Westmoreland	2,088	.....	347,612.00	9,470.00	2,153	.....	350,571.00	9,668.00
Wise	34	.....	148,505.00	1,475.00	38	.....	165,646.00	1,725.00
Wythe	1,116	.....	1,143,261.00	25,095.00	1,120	.....	1,100,401.00	19,620.00
York	999	.....	215,671.00	2,500.00	990	.....	195,190.00	.....
Total	243,986	.....	$94,995,274.09	$3,665,076.41	253,351	.....	$100,201,850.44	$2,296,964.74
WEST VIRGINIA:								
Barbour	68	.....	$ 516,950.00	$ 4,508.00	.....	.....	.....	.....
Berkeley	911	.....	797,998.00	3,080.00	926	.....	$ 862,022.00	$4,826.00
Boone	86	.....	187,680.00	2,815.00	.....	.....	.....	.....
Braxton	54	.....	289,435.00	825.00	57	.....	311,153.00	.....
Brooke	5	.....	407,487.00	7,650.00	.....	.....	.....	.....
Cabell	216	.....	605,462.00	4,800.00	.....	.....	.....	.....
Calhoun	6	.....	55,955.00	400.00	.....	.....	.....	.....
Clay	25	.....	105,320.00	510.00	9	.....	57,527.00	847.00
Doddridge	17	.....	165,220.00	2,362.00	.....	.....	.....	.....
Fayette	127	.....	219,158.00	1,020.00	124	.....	242,411.00	.....
Carried forward	1.515	.....	$3,350,665.00	$27,970.00	1,116	.....	$1,473,113.00	$5,673.00

1862				1863				TOTAL OF
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Oth Pers Pro
Number.	Value.			Number.	Value.			Number.	Value.	
305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$ 9,657,545.43	328,375	$209,884,569.00	$117,6
5,266	1,965,820.00	728,410.00	10,144.00	5,344	4,332,910.00	1,124,730.00	5,590.00	5,344	4,332,910.00	1,1
6,998	2,673,880.00	1,027,941.00	17,638.00	7,081	5,141,651.00	1,690,959.00	68,592.00	7,081	5,141,651.00	1,6
4,536	1,810,132.00	892,677.00	11,576.00	.....	.....	.....	.....	4,536	1,810,132.00	8
.....	.....	.....	.....	.....	.....	.....	.....	1,243	*623,489.00	5
....	.....	.....	.....	.....	.....	.....	.....	224	*112,358.00	5
1,636	611,015.00	834,437.00	535.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,766	1,181,545.00	1,4
3,316	1,122,450.00	801,219.00	600.00	2,281	1,663,150.00	1,046,446.00	.....	2,281	1,663,150.00	1,0
1,954	672,335.00	472,179.22	.....	2,112	725,870.00	561,667.81	.....	2,112	725,870.00	5
2,766	896,650.00	997,282.00	4,100.00	2,766	2,157,455.00	1,558,317.00	128,727.00	2,766	2,157,455.00	1,5
4,024	1,457,367.00	2,253,946.00	22,325.00	4,145	3,097,825.00	3,533,582.00	57,370.00	4,145	3,097,825.00	3,5
2,164	768,405.00	3,019,088.00	4,933.00	2,039	1,564,820.00	4,726,373.00	57,522.50	2,039	1,564,820.00	4,7
1,061	357,490.00	690,654.00	.....	1,081	909,880.00	1,187,672.00	.....	1,081	909,880.00	1,1
465	186,175.00	726,728.00	300.00	517	327,500.00	998,689.00	300.00	517	327,500.00	9
549	220,600.00	1,531,642.00	800.00	255	163,750.00	1,159,671.00	476.00	255	163,750.00	1,1
1,044	424,570.00	621,355.00	.....	1,624	1,701,190.00	1,621,730.00	414,460.00	1,624	1,701,190.00	1,6
5,081	1,812,250.00	1,419,703.00	5,290.00	4,783	2,464,255.00	1,841,724.80	1,955.00	4,782	2,464,255.00	1,8
3,220	1,292,815.00	637,604.00	9,577.00	.....	.....	.....	.....	3,220	1,292,815.00	6
1,117	441,675.00	654,447.00	57,016.00	.....	.....	.....	.....	1,117	441,675.00	6
.....	.....	.....	.....	.....	.....	.....	.....	1,545	*774,972.00	4
2,280	688,603.00	361,492.72	2,654.00	1,835	921,995.00	466,413.00	37,562.00	1,835	921,995.00	4
6,043	2,372,325.00	941,440.00	1,382.00	5,921	3,209,560.00	1,273,032.00	1,852.00	5,921	3,209,560.00	1,2
1,124	378,318.00	595,882.00	2,250.00	1,186	820,420.00	1,059,241.00	2,000.00	1,186	820,420.00	1,0
1,348	429,775.00	536,819.00	340.00	.....	.....	.....	.....	1,348	429,775.00	5
.....	.....	.....	.....	.....	.....	.....	.....	616	*308,986.00	
2,507	864,335.00	1,466,021.00	4,250.00	2,771	1,754,750.00	2,216,805.00	86,554.00	2,771	1,754,750.00	2,2
3,328	1,086,393.00	404,323.00	1,333.00	2,127	850,150.00	598,204.00	670.00	2,127	850,150.00	5
51	24,000.00	175,155.00	.....	67	55,920.00	274,984.00	.....	67	55,920.00	
1,941	638,540.00	1,223,559.00	8,750.00	2,190	1,631,640.00	2,198,741.00	185,391.00	2,190	1,631,640.00	2,1
.....	.....	.....	.....	.....	.....	.....	.....	990	*496,584.00	1
369,466	$126,789,911.00	$95,332,909.87	$1,719,312.43	346,965	$228,054,341.00	$133,827,871.09	$10,709,316.93	395,105	$250,851,591.00	$152,5
.....	.....	.....	.....	.....	.....	.....	.....	68	*$ 33,201.00	$
.....	.....	.....	.....	.....	.....	.....	.....	926	*452,119.00	
.....	.....	.....	.....	.....	.....	.....	.....	86	*41,989.00	
.....	.....	.....	.....	.....	.....	.....	.....	57	*27,830.00	
.....	.....	.....	.....	.....	.....	.....	.....	5	*2,441.00	
.....	.....	.....	.....	.....	.....	.....	.....	216	*105,462.00	
.....	.....	.....	.....	.....	.....	.....	.....	6	*2,929.00	
.....	.....	.....	.....	.....	.....	.....	.....	9	*4,394.00	
.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	
.....	.....	.....	.....	.....	.....	.....	.....	124	*60,543.00	
.....	.....	.....	.....	.....	.....	.....	.....	1,514	$739,208.00	$3

1863				Total of Latest Assessment.					County.
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.				
295,074	$193,378,105.00	$103,217,994.48	$ 9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$ 9,946,175.83	$229,853,755.18	
5,344	4,332,910.00	1,124,730.00	5,590.00	5,344	4,332,910.00	1,124,730.00	5,590.00	1,942,646.93	Powhatan.
7,081	5,141,651.00	1,690,959.00	68,592.00	7,081	5,141,651.00	1,690,959.00	68,592.00	2,299,360.30	Prince Edward.
.....	.....	.....	.....	4,536	1,810,132.00	892,677.00	11,576.00	1,887,005.40	Prince George.
.....	.....	.....	.....	1,243	*623,489.00	578,707.00	8,514.80	2,629,411.00	Prince William.
.....	.....	.....	.....	224	*112,358.00	563,823.00	.....	1,531,299.27	Princess Anne.
1,766	1,181,545.00	1,470,895.00	2,750.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,781,920.36	Pulaski.
2,281	1,663,150.00	1,046,446.00	.....	2,281	1,663,150.00	1,046,446.00	.....	2,698,529.86	Rappahannock.
2,112	725,870.00	561,667.81	.....	2,112	725,870.00	561,667.81	.....	1,069,219.04	Richmond.
2,766	2,157,455.00	1,558,317.00	128,727.00	2,766	2,157,455.00	1,558,317.00	128,727.00	3,014,050.66	Roanoke.
4,145	3,097,825.00	3,533,582.00	57,370.00	4,145	3,097,825.00	3,533,582.00	57,370.00	5,333,247.55	Rockbridge.
2,039	1,564,820.00	4,726,373.00	57,522.50	2,039	1,564,820.00	4,726,373.00	57,522.50	8,424,219.96	Rockingham.
1,081	909,880.00	1,187,672.00	.....	1,081	909,880.00	1,187,672.00	.....	1,576,304.75	Russell.
517	327,500.00	998,689.00	300.00	517	327,500.00	998,689.00	300.00	1,248,493.57	Scott.
255	163,750.00	1,159,671.00	476.00	255	163,750.00	1,159,671.00	476.00	4,499,679.62	Shenandoah.
1,624	1,701,190.00	1,621,730.00	414,460.00	1,624	1,701,190.00	1,621,730.00	414,460.00	2,518,350.84	Smyth.
4,783	2,464,255.00	1,841,724.80	1,955.00	4,783	2,464,255.00	1,841,724.80	1,955.00	1,549,447.12	Southampton.
.....	.....	.....	.....	3,220	1,292,815.00	637,604.00	9,577.00	2,413,479.86	Spottsylvania.
.....	.....	.....	.....	1,117	441,675.00	654,447.00	57,016.00	1,388,430.00	Fredericksburg.
.....	.....	.....	.....	1,545	*774,972.00	441,672.50	22,209.00	1,711,582.00	Stafford.
1,835	921,995.00	466,413.00	37,562.00	1,835	921,995.00	466,413.00	37,562.00	881,874.16	Surry.
5,921	3,209,560.00	1,273,032.00	1,852.00	5,921	3,209,560.00	1,273,032.00	1,852.00	1,065,446.22	Sussex.
1,186	820,420.00	1,059,241.00	2,000.00	1,186	820,420.00	1,059,241.00	2,000.00	1,860,424.00	Tazewell.
.....	.....	.....	.....	1,348	429,775.00	536,819.00	340.00	2,080,567.84	Warren.
.....	.....	.....	.....	616	*308,986.00	90,080.00	1,120.00	453,501.21	Warwick.
2,771	1,754,750.00	2,216,805.00	86,554.00	2,771	1,754,750.00	2,216,805.00	86,554.00	4,490,523.00	Washington.
2,127	850,150.00	598,204.00	670.00	2,127	850,150.00	598,204.00	670.00	1,674,143.00	Westmoreland.
67	55,920.00	274,984.00	.....	67	55,920.00	274,984.00	.....	277,640.83	Wise.
2,190	1,631,640.00	2,198,741.00	185,391.00	2,190	1,631,640.00	2,198,741.00	185,391.00	3,033,517.92	Wythe.
.....	.....	.....	.....	990	*496,584.00	195,190.00	.....	897,388.86	York.
346,965	$228,054,341.00	$133,827,871.09	$10,709,316.93	395,105	$250,851,591.00	$152,844,637.59	$11,108,300.13	$296,085,460.31	
.....	.....	.....	.....	68	*$ 33,201.00	$ 516,950.00	$ 4,508.00	$ 1,435,327.12	Barbour.
.....	.....	.....	.....	926	*452,119.00	862,022.00	4,826.00	5,298,640.00	Berkeley.
.....	.....	.....	.....	86	*41,989.00	187,680.00	2,815.00	501,364.79	Boone.
.....	.....	.....	.....	57	*27,830.00	311,153.00	.....	779,557.90	Braxton.
.....	.....	.....	.....	5	*2,441.00	407,487.00	7,650.00	1,166,793.00	Brooke.
.....	.....	.....	.....	216	*105,462.00	605,462.00	4,800.00	2,032,209.92	Cabell.
.....	.....	.....	.....	6	*2,929.00	55,955.00	400.00	323,404.70	Calhoun.
.....	.....	.....	.....	9	*4,394.00	57,527.00	847.00	227,043.32	Clay.
.....	.....	.....	.....	17	*8,300.00	165,220.00	2,362.00	791,411.00	Doddridge.
.....	.....	.....	.....	124	*60,543.00	242,411.00	.....	910,550.25	Fayette.
.....	.....	.....	.....	1,514	$739,208.00	$3,411,867.00	$28,208.00	$13,466,302.00	

County.	1860				1861			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.
	Number.	Value.			Number.	Value.		
Brought forward	1,515	.....	$ 3,350,665.00	$ 27,970.00	1,116	.....	$ 1,473,113.00	$ 5,673.00
Gilmer	21	.....	161,522.00	1,601.00	28	.....	175,772.00	935.00
Greenbrier	996	.....	1,808,705.00	33,240.32	984	.....	1,902,530.00	18,250,26
Hampshire	729	.....	1,082,218.00	14,207.50	.....	.....	.....	.....
Hancock	1	.....	262,146.00	450.00	.....	.....	.....	.....
Hardy	645	.....	942,419.00	5,679.00	641	.....	1,014,392.00	7,710.00
Harrison	292	.....	1,083,482.00	5,751.00	.....	.....	.....	.....
Jackson	42	.....	294,986.00	4,217.00	41	.....	303,932.00	600.00
Jefferson	2,256	.....	1,910,687.00	24,365.00	2,256	.....	1,888,233.00	13,190.20
Kanawha	1,238	.....	720,969.00	30,271.00	1,237	.....	749,570.00	28,542.00
Lewis	103	.....	432,826.00	5,246.00	.....	.....	.....	.....
Logan	30	.....	120,156.00	.....	.....	.....	.....	.....
McDowell	.....	.....	31,138.00	.....	.....	.....	35,595.00	.....
Marion	46	.....	717,028.00	10,600.00	.....	.....	.....	.....
Marshall	20	.....	340,471.00	3,758.00	.....	.....	.....	.....
Mason	200	.....	548,385.00	2,500.00	.....	.....	.....	.....
Mercer	192	.....	279,050.00	1,500.00	191	.....	300,545.00	.....
Monongalia	69	.....	1,071,376.00	4,700.00	.....	.....	.....	.....
Monroe	611	.....	1,408,522.00	12,588.00	627	.....	1,416,431.00	5,663.00
Morgan	60	.....	186,232.00	150.00	59	.....	202,144.00	400.00
Nicholas	85	.....	264,084.00	1,636.00	76	.....	237,162.00	50.00
Ohio	21	.....	347,555.00	1,600.00	.....	.....	.....	.....
Wheeling	2	.....	470,005.00	95,748.00	.....	.....	.....	.....
Pendleton	138	.....	523,324.00	1,805.00	139	.....	520,629.00	15.00
Pleasants	7	.....	129,035.00	800.00	.....	.....	.....	.....
Pocahontas	.....	.....	.....	.....	139	.....	470,156.00	.....
Preston	41	.....	679,170.00	2,500.00	.....	.....	.....	.....
Putnam	353	.....	299,725.00	930.00	345	.....	332,887.00	540.00
Raleigh	28	.....	125,355.00	1,000.00	35	.....	134,835.00	.....
Randolph	107	.....	306,617.00	1,561.00	20	.....	126,805.00	.....
Ritchie	12	.....	261,832.00	2,726.00	.....	.....	.....	.....
Roane	35	.....	158,731.00	2,130.00	37	.....	185,404.00	1,440.00
Taylor	68	.....	361,874.00	800.00	.....	.....	.....	.....
Tucker	17	.....	77,679.00	698.00	.....	.....	.....	.....
Tyler	7	.....	308,536.00	948.00	.....	.....	.....	.....
Upshur	97	.....	401,914.00	2,202.00	.....	.....	.....	.....
Wayne	74	.....	363,127.00	1,045.00	77	.....	380,000.00	265.00
Webster	.....	.....	21,554.00	.....	.....	.....	59,546.21	.....
Wetzel	8	.....	19,060.00	430.00	.....	.....	.....	.....
Wirt	17	.....	110,893.00	1,470.00	.....	.....	.....	.....
Wood	82	.....	683,030.00	29,758.50	.....	.....	.....	.....
Wyoming	36	.....	121,083.00	506.00	35	.....	112,066.00	.....
Total	10,301	.....	$22,787,166.00	$339,087.32	8,983	.....	$13,021,747.21	$83,273.46

1862				1863				Total of Lates		
Slaves.		Other Personal Property.	Income.	Slaves		Other Personal Property.	Income.	Slaves.		Oth Perso Prop
Number.	Value.			Number.	Value.			Number.	Value.	
.....	.....	.....	.....	.....	.....	.....	.....	1,514	$ 739,208.00	$ 3,411
.....	.....	.....	.....	.....	.....	.....	.....	28	*13,671.00	175
1,419	$ 599,761.00	$1,883,100.00	$10,295.00	928	$ 745,220.00	$2,252,197.00	$17,630.75	928	745,220.00	2,252
.....	.....	.....	.....	.....	.....	.....	.....	729	*355,934.00	1,082
.....	.....	.....	.....	.....	.....	.....	.....	1	*488.00	262
.....	.....	.....	.....	.....	.....	.....	.....	641	*312,968.00	1,014
.....	.....	.....	.....	.....	.....	.....	.....	292	*142,569.00	1,082
.....	.....	.....	.....	.....	.....	.....	.....	41	*20,018.00	303
.....	.....	.....	.....	.....	.....	.....	.....	2,256	*1,101,492.00	1,888
.....	.....	.....	.....	.....	.....	.....	.....	1,237	*603,965.00	749
.....	.....	.....	.....	.....	.....	.....	.....	103	*50,290.00	432
.....	.....	.....	.....	.....	.....	.....	.....	30	*14,647.00	126
.....	.....	33,995.00	.....	177	19,295.00	29,455.00	.....	177	19,295.00	29
.....	.....	.....	.....	.....	.....	.....	.....	46	*22,459.00	717
.....	.....	.....	.....	.....	.....	.....	.....	20	*9,765.00	346
.....	.....	.....	.....	.....	.....	.....	.....	200	*97,650.00	548
301	95,370.00	308,960.00	30.00	176	123,615.00	368,388.00	.....	176	123,615.00	368
.....	.....	.....	.....	.....	.....	.....	.....	69	*33,689.00	1,071
1,136	401,830.00	1,541,052.00	1,687.00	1,052	569,325.00	2,010,111.00	12,853.50	1,052	569,325.00	2,016
.....	.....	.....	.....	.....	.....	.....	.....	59	*28,807.00	203
.....	.....	.....	.....	.....	.....	.....	.....	76	*37,107.00	231
.....	.....	.....	.....	.....	.....	.....	.....	21	*10,253.00	347
.....	.....	.....	.....	.....	.....	.....	.....	2	*976.00	47
201	61,450.00	555,093.00	80.00	155	91,450.00	786,301.00	.....	155	91,450.00	786
.....	.....	.....	.....	.....	.....	.....	.....	7	*3,418.00	12
.....	.....	.....	.....	.....	.....	.....	.....	139	*67,867.00	476
.....	.....	.....	.....	.....	.....	.....	.....	41	*20,018.00	67
.....	.....	.....	.....	.....	.....	.....	.....	345	*168,446.00	339
.....	.....	.....	.....	.....	.....	.....	.....	35	*17,089.00	139
.....	.....	.....	.....	.....	.....	.....	.....	20	*9,765.00	12
.....	.....	.....	.....	.....	.....	.....	.....	12	*5,859.00	20
.....	.....	.....	.....	.....	.....	.....	.....	37	*18,065.00	18
.....	.....	.....	.....	.....	.....	.....	.....	68	*33,201.00	36
.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	7
.....	.....	.....	.....	.....	.....	.....	.....	7	*3,418.00	30
.....	.....	.....	.....	.....	.....	.....	.....	97	*47,360.00	40
.....	.....	.....	.....	.....	.....	.....	.....	77	*37,595.00	38
.....	.....	.....	.....	.....	.....	.....	.....	.....	....	8
.....	.....	.....	.....	.....	.....	.....	.....	8	*3,906.00	12
.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	11
.....	.....	.....	.....	.....	.....	.....	.....	82	*40,036.00	68
.....	.....	.....	.....	.....	.....	.....	.....	35	*17,089.00	11
3,057	$1,158,411.00	$4,322,200.00	$12,092.00	2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,897	$5,654,593.00	$24,73

1863				Total of Latest Assessment.					County.
Slaves		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.				
.....	.....	.....	.....	1,514	$ 739,208.00	$ 3,411,867.00	$ 28,208.00	$13,466,302.00	
.....	.....	.....	.....	28	*13,671.00	175,772.00	935.00	769,507.31	Gilmer.
928	$ 745,220.00	$2,252,197.00	$17,630.75	928	745,220.00	2,252,197.00	17,630.75	3,466,378.52	Greenbrier.
.....	.....	.....	.....	729	*355,934.00	1,082,218.00	14,207.50	3,958,442.86	Hampshire.
.....	.....	.....	.....	1	*488.00	262,146.00	450.00	909,007.51	Hancock.
.....	.....	.....	.....	641	*312,968.00	1,014,392.00	7,710.00	2,911,771.10	Hardy.
.....	.....	.....	.....	292	*142,569.00	1,083,482.00	5,751.00	3,797,604.16	Harrison.
.....	.....	.....	.....	41	*20,018.00	303,932.00	600.00	1,648 682.47	Jackson.
.....	.....	.....	.....	2,256	*1,101,492.00	1,888,233.00	13,190.20	6,802,928.00	Jefferson.
.....	.....	.....	.....	1,237	*603,965.00	749,570.00	28,542,00	3,287,882.51	Kanawha.
.....	.....	.....	.....	103	*50,290.00	432,826.00	5,246.00	1,278,235.39	Lewis.
.....	.....	.....	.....	30	*14,647.00	120,156.00	.....	388.650.94	Logan.
177	19,295.00	29,455.00	.....	177	19,295.00	29,455.00	.....	173,698.05	McDowell.
.....	.....	.....	.....	46	*22,459.00	717,028.00	10,600.00	2.721,068.13	Marion.
.....	.....	.....	.....	20	*9,765.00	340,471 00	3,758.00	2,371,997.95	Marshall.
.....	.....	.....	.....	200	*97,650.00	548,385.00	2,500.00	2,814 941.08	Mason.
176	123,615.00	368,388.00	.....	176	123,615.00	368,388.00	.....	679,564.35	Mercer.
.....	.....	.....	.....	69	*33,689.00	1,071,376.00	4,700.00	2,954.126.46	Monongalia.
1,052	569,325.00	2,010,111.00	12,853.50	1,052	569,325.00	2,010,111.00	12,853.50	3,399,322 99	Monroe.
.....	.....	.....	.....	59	*28,807.00	202,144.00	400.00	740.758.44	Morgan.
.....	.....	.....	.....	76	*37,107.00	237,162.00	50.00	778,012.33	Nicholas.
.....	.....	.....	.....	21	*10,253.00	347,555.00	1,600.00	5,074,553.00	Ohio.
.....	.....	.....	.....	2	*976.00	470,005.00	95,748.00	.....	Wheeling.
155	91,450.00	786,301.00	.....	155	91,450.00	786,301.00	.....	1,098,709.70	Pendleton.
.....	.....	.....	.....	7	*3,418.00	129,035.00	800.00	577,606.79	Pleasants.
.....	.....	.....	.....	139	*67,867.00	470,156.00	.....	1,189,733.24	Pocahontas.
.....	.....	.....	.....	41	*20,018.00	679,170.00	2,500.00	1,679,082.61	Preston.
.....	.....	.....	.....	345	*168,446.00	332,887.00	540.00	982,826.02	Putnam.
.....	.....	.....	.....	35	*17,089.00	134,835.00	.....	498,330.90	Raleigh.
.....	.....	.....	.....	20	*9,765.00	126,805.00	.....	1,136,745.77	Randolph.
.....	.....	.....	.....	12	*5,859.00	261,832.00	2,726.00	1,166,737.79	Ritchie.
.....	.....	.....	.....	37	*18,065.00	185,404.00	1,440.00	468,005.20	Roane.
.....	.....	.....	.....	68	*33,201.00	361,871.00	800.00	1,241,003.36	Taylor.
.....	.....	.....	.....	17	*8,300.00	77,679.00	698.00	288,520.66	Tucker.
.....	.....	.....	.....	7	*3,418.00	308,536.00	948.00	878,326.00	Tyler.
.....	.....	.....	.....	97	*47,360.00	401,914 00	2,202.00	1,329,680.83	Upshur.
.....	.....	.....	.....	77	*37,595.00	380,000.00	265.00	1,135,038.58	Wayne.
.....	.....	.....	.....	.....	....	59,546.21	.....	216,085.00	Webster.
.....	.....	.....	.....	8	*3,906.00	19,060.00	430.00	789,068.00	Wetzel.
.....	.....	.....	.....	17	*8,300.00	110,893.00	1,470.00	508,578.48	Wirt.
.....	.....	.....	.....	82	*40,036.00	683,930.00	29,758.50	2,600,610.50	Wood.
.....	.....	.....	.....	35	*17,089.00	112,066.00	.....	271,127.06	Wyoming.
2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,897	$5,654,593.00	$24,739,894.21	$299,257.45	$82,449,252.04	

PLAINTIFF'S EXHIBIT E 2.

IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

"That in December, 1861, and in 1862, and down to the close of the war, in April, 1865, the treasury notes of the Confederate States were in general circulation as currency in this city; that these treasury notes were constantly diminishing in value from the 1st of January, 1862, to the end of the war; that the following table shows the value of said currency in gold at various times in the City of Lynchburg, to-wit:

Months	1861	1862	1863	1864	1865
January	....	1.25	3.00	20 to 20½	45 to 60
February	....	1.25	4.00	21½ to 25	45 to 65
March	....	1.30	5.00	23 to 24½	70 to 60
April	....	1.40	5.50	22 to 23	60
May	1.10	1.50	5½ to 6	18 to 21	
June	1.10	1.50	7 to 8	17 to 19	
July	1.10	1.50	9	20 to 23	
August	1.10	1.50	12 to 13	22½ to 25	
September	1.10	2.50	12 to 13	22½ to 27½	
October	1.15	2.50	14	26 to 27	
November	1.15	3.00	15 to 17	27½ to 33½	
December	1.20	3.00	18 to 20	34 to 49	

I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, certify that the foregoing is a true extract from the record of Dearing's Administratrix vs. Rucker, decided by the Supreme Court of Appeals of Virginia at its April Term, 1868, and that the table therein copied showing the value of Confederate States treasury notes at various times during the war, is the only table filed, or to be found in the record of said cause.

Given under my hand this the 1st day of July, 1909.

H. STEWART JONES,
Clerk of the Supreme Court of Appeals of Virginia.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA *vs* STATE OF WEST VIRGINIA.

COMPARISON OF ASSESSED VALUATION OF ALL PROPERTY FROM 1867 TO 1908 INCLUSIVE.

Virginia and
West Virginia

PLAINTIFF'S EXHIBIT E-3.

VIRGINIA FIGURES TAKEN FROM VIRGINIA AUDITORS REPORT FOR RESPECTIVE YEARS.

WEST VIRGINIA FIGURES TAKEN FROM "BIENNIAL REPORT OF THE AUDITOR" OF WEST VIRGINIA FOR 1907-8. PAGE 126 STATEMENT LXVIII.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

PLAINTIFF'S EXHIBIT E-3.

TOTAL ASSESSED VALUATION OF REAL ESTATE, PERSONAL AND RAILROAD PROPERTY IN VIRGINIA AND WEST VIRGINIA WITH PERCENTAGES OF EACH TO THE TOTAL.

NOTE.—The Assessed Valuation of Railroads from 1867 to 1879, inclusive, in Virginia is not shown in Auditor's reports, so we estimate their value at $9,000,000.00 and add that amount in each year.

1867	Virginia	$354,848,482.69	73.79%
	West Virginia	126,060,743.00	26.21%
1868	Virginia	357,699,144.00	72.17%
	West Virginia	137,952,255.00	27.83%
1869	Virginia	363,480,163.33	72.41%
	West Virginia	138,510,065.00	27.59%
1870	Virginia	388,557,534.00	73.40%
	West Virginia	140,783,286.00	26.60%
1871	Virginia	370,202,374.38	72.07%
	West Virginia	143,436,703.00	27.93%
1872	Virginia	351,552,630.38	71.05%
	West Virginia	143,270,414.00	28.95%
1873	Virginia	345,686,411.23	70.19%
	West Virginia	146,845,522.00	29.81%
1874	Virginia	341,428,256.00	69.72%
	West Virginia	148,305,419.00	30.28%
1875	Virginia	335,309,651.49	68.09%
	West Virginia	157,118,644.00	31.91%
1876	Virginia	330,317,488.75	68.49%
	West Virginia	151,977,231.00	31.51%
1877	Virginia	332,989,771.56	68.70%
	West Virginia	151,681,708.00	31.30%
1878	Virginia	325,686,872.31	68.90%
	West Virginia	147,021,912.00	31.10%
1879	Virginia	328,393,559.22	69.04%
	West Virginia	147,266,120.00	30.96%
1880	Virginia	317,191,383.17	68.33%
	West Virginia	146,991,740.00	31.67%
1881	Virginia	333,469,913.75	68.76%
	West Virginia	151,479,428.00	31.24%
1882	Virginia	343,813,689.50	68.92%
	West Virginia	155,050,076.00	31.08%
1883	Virginia	353,975,149.88	67.00%
	West Virginia	174,309,734.00	33.00%
1884	Virginia	364,638,390.03	67.34%
	West Virginia	176,796,754.00	32.66%
1885	Virginia	383,723,692.70	68.07%
	West Virginia	179,958,334.00	31.93%
1886	Virginia	375,375,333.50	68.33%
	West Virginia	173,993,762.00	31.67%
1887	Virginia	375,043,238.31	67.28%
	West Virginia	182,346,389.06	32.72%
1888	Virginia	$380,429,882.52	67.95%
	West Virginia	179,385,329.00	32.05%
1889	Virginia	384,014,695.75	67.68%
	West Virginia	183,381,499.75	32.32%
1890	Virginia	404,923,584.55	68.38%
	West Virginia	187,165,353.61	31.62%
1891	Virginia	439,832,800.41	69.44%
	West Virginia	193,533,458.00	30.56%
1892	Virginia	448,039,022.67	67.28%
	West Virginia	217,858,413.64	32.72%
1893	Virginia	453,151,823.73	67.09%
	West Virginia	222,218,154.37	32.91%
1894	Virginia	450,277,768.08	67.17%
	West Virginia	220,007,517.00	32.83%
1895	Virginia	438,258,777.14	66.17%
	West Virginia	224,025,744.40	33.83%
1896	Virginia	451,931,676.89	67.69%
	West Virginia	215,669,932.30	32.31%
1897	Virginia	459,023,847.08	67.75%
	West Virginia	218,517,105.72	32.25%
1898	Virginia	462,892,204.46	67.57%
	West Virginia	222,195,486.10	32.43%
1899	Virginia	469,732,937.09	67.28%
	West Virginia	228,409,289.26	32.72%
1900	Virginia	488,773,981.77	66.95%
	West Virginia	241,313,244.18	33.05%
1901	Virginia	497,956,643.30	66.69%
	West Virginia	248,749,692.90	33.31%
1902	Virginia	501,284,776.89	67.67%
	West Virginia	239,476,148.94	32.33%
1903	Virginia	519,352,393.00	65.82%
	West Virginia	269,644,299.60	34.18%
1904	Virginia	533,757,406.00	65.76%
	West Virginia	277,859,198.92	34.24%
1905	Virginia	571,997,927.00	63.05%
	West Virginia	335,203,005.85	36.95%
1906	Virginia	597,835,020.00	40.42%
	West Virginia	881,285,710.95	59.58%
1907	Virginia	632,285,784.00	40.48%
	West Virginia	929,663,694.63	59.52%
1908	Virginia	661,796,631.00	41.38%
	West Virginia	937,232,718.54	58.62%

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

PLAINTIFF'S EXHIBIT E-4.

Prepared for the Plaintiff, and certified to as correct by
JOHN B. LIGHTFOOT, Jr.
Richmond, Va.

Comparison of Actual Value of Real Property in Virginia, June, 1863, with Assessed Value. 1863, showing percentage of Decrease in Actual Value, as evidenced by sales recorded from April to August, 1863, in Richmond City, and Counties of Henrico, Hanover, and Chesterfield.

RICHMOND CITY

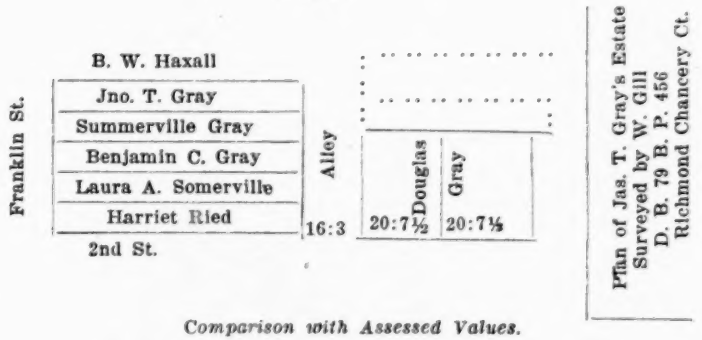
ESTATE OF JAMES GRAY.

Deed Book 79 B. 462.

At the request of the heirs of James Gray, his realty in the City of Richmond was appraised by Messrs. Wellington Goddin, James M. Taylor and A. D. Williams for partition.

The report of these appraisers is made part of the partition deed and recorded with it.

The report is dated *June 22, 1863.*



	Character	Location	Front Feet	Appraised Value		*Comparison with Assessed Values.* 1863 Appraised Value	†Reduced To Gold @ 7 3-4	‡1863 Assessed Value	Decrease	%
1	Brick Tenement	S. E. Cor. Second and Franklin	26′ 10″	$30,000.00						
2	" "	Adjoining, 2nd from above on East	26′ 2″	28,000.00						
3	" "	Adjoining, 3rd from above on East	26′ 1″	28,000.00						
4	" "	Adjoining, 4th from above on East	26′ 2″	28,000.00						
5	" "	Adjoining, 5th from above on East	26′ 9″	29,000.00	*130′	$143,000.00	$18,451.61	$37,150.00	$18,698.39	50.33
6	Brick Tenement	E. side Second bet. Main and Franklin	20′ 7½″	11,000.00						
7	" "	Adjoining this	20′ 7½″	11,000.00	*44′	22,000.00	2,838.71	7,540.00	4,701.29	62.35
8	Brick Tenement	N. E. Cor. Broad and 4th Sts.	52′	20,000.00	52′	20,000.00	2,580.65	11,900.00	9,319.35	78.31
9	" "	Adjoining this	52′	18,000.00	52′	18,000.00	2,322.58	12,900.00	10,577.42	82
10	Warehouse and Offices	S. E. Corner 13th and Cary	61′	55,000.00	61′	55,000.00	7,096.77	21,320.00	14,223.23	66.71
				$258,000.00		$258,000.00	$33,290.32	$90,810.00	$57.519.68	63.34

* Grouped on Land Books.
†See Plaintiff's Exhibit E-2.
‡Same as assessment of 1856, see Appendix.

Plaintiff's Exhibit E-4
Sheet 2

Deed Book #79A.

RICHMOND CITY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold.	Assessment 1863	Decrease	Per cent.	
274	Dennis Delaney and wife to Thos. L. Hardy	Conveys 19' No. Side Jackson St., back 120'—Part of lot #4 in plot with deed from W. Goddin &c., to Burch, July 5, 1845.	Apl.. 6/63	$ 3,000.00	5 1/2	$ 545.45	$ 733.00	$ 187.55	25.59	Bldg. $133.00
314	Alex. H. Rutherfoord to Charles Behle	Conveys 25' No. Side Broad near First St. back about 130'.	Apl. 22/63	12,650.00	5 1/2	2,300.00	4,000.00	1,700.00	42.50	
427	Wm. W. Dunnavant and wife to Joseph F. Powell	Conveys 60' No. Side Cary near 3rd Back 160'.	June 1/63	8,400.00	7 1/2	1,120.00	2,100.00	980.00	46.67	No Bldg.
	Deed Book No. 79 B.									
475	Philip K. White and wife to Jno. B. Davis	Conveys 35' E. Side Mayo, bet. Franklin & Broad—Part of #17 in Mayo's plan, on Council Chamber Hill—White from Peyton Johnson.	June 6/63	10,000.00	7 1/2	1,333.34	5,500.00	4,166.66	75.76	Bldg. $4,000.00
405	Wm. A. Thomas to Joseph Hodgson	Conveys 22', 12th St. between Broad & Marshall Back 106 ft.	June 9/63	11,950.00	7 1/2	1,593.34	5,290.00	3,696.66	69.89	Bldg. $3,750.00
464	James B. White and wife to Ezekiel J. Levy	Conveys 21 feet So. Side Grace—Corner First Back 156'.	June 16/63	23,500.00	7 3/	3,032.26	7,000.00	3,967.74	56.69	Bldg. $6,000.00
	Joseph August and wife to Frank J. Brand Deed Rec'd Henrico D. B. 79, p. 350, assessed Richmond.	Conveys 33' So. Side Broad between Monroe & Madison 2nd door from Cor. Monroe.	June 23/63	2,000.00	7 3/4	258.07	1,646.00	1,387.93	84.32	Bldg. $1,250.00
475	Daniel Trueheart, Jr., to Wolff Jacobs	Conveys 33 No. Side Main Between 17th & 18th "Designated on Assors Books by letter C."	July 8/63	17,500.00	9	1,944.45	7,300.00	5,355.55	73.36	Bldg. $4,000.00

HENRICO COUNTY.

Deed Book #79.

Plaintiff's Exhibit E-4 Sheet 7

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
451	Ellis Juan to J. M. Marshall	Conveys 44 3/4 feet, being lot #29 "Green Plan." Near Penitentiary on Belvidere Hill.	May 10/63	$ 800.00	5 1/2	$145.45	$600.00	$454.55	75.75	No Bldgs.
314	Wm. O. Taylor and wife to Marcus Kaughman	Conveys 80 Acres on new road to Williamsb'g. About 5 miles below Rd. Adj. lands of Courtney, Plat with Deed.	June 1/63	1,460.00	7 1/2	194.67	800.00	605.33	75.67	No Bldgs.
629	Margaret Heron to L. B. Lipscamb	Conveys part of lot #2, Sq. 118, Adam's plan—front'g 55 feet E. Side 24th between N. & O. Sts.	June 4/63	962.50	7 1/2	128.33	200.00	71.67	35.84	No Bldgs.
367	H. P. Poindexter to Thos. Bruton	Conveys 4.754 Acres about 1½ miles from Rd. (W.) on Road from Meadow Bridge to Brook Tpk.	June 13/63	700.00	7 1/2	93.33	285.00	191.67	67.25	No Bldgs.
444	Sam. G. Greenhow and B. Winston to J. Schutte	Conveys 166 Acres adjoining lands of Jas. Currie on Four Mile Run.	June 20/63	3,320.00	7 3/4	428.40	1,328.00	899.60	67.74	
353	Sam'l Huffman and wife to Jno. Ad. Neidemayer	Conveys 34 Acres, more or less Upper End Henrico, adjoining Reeves Tinsley.	June 22/63	900.00	7 3/4	116.13	340.00	223.87	65.84	No Bldgs.
493	A. E. Dickenson and wife to J. H. Oliver	Conveys 30 feet, So. Side Grace extended, (Sydney) back 150'.	June 29/63	2,040.00	7 3/4	263.22	300.00	36.78	12.26	No Bldgs.
368	Jno. Nettles and wife to Jno. Hughes	Conveys 47 acres (estimated) about 8 miles below Rd. adjoining Jas. A. Carter et als.	July 1/63	1,500.00	9	166.67	376.00	209.33	55.67	

HENRICO COUNTY.

Plaintiff's Exhibit E-4
Sheet 4

Deed Book #79.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
454	Pleasants Roach and wife to Jno. Hart	Conveys lots 6 & 7 in Plan of Sydney, fronting 90' So. Side Westham Road.	July 9/63	$ 300.00	9	$ 33.34	$ 200.00	$ 166.66	83.33	No Bldgs.
429	J. H. Poindexter and wife to J. D. Hammersly	Conveys "Rocketts Mills" property —Land Bks. show near Gas House containing 12 Acres.	July 30/63	26,500.00	9 10	2,944.44 2,650.00	7,200.00	4,255.56 4,550.00	59.10 63.19	Includes Bldg. $2,000.00—
433	Wm. Taylor, Tr. for Maria Brimmer to Henry Linkhauer	Conveys 157' × 173' on No. side Venable near 25th St.	July 31/63	16,000.00	9 10 11	1,777.77 1,600.00 1,454.55	2,000.00	222.23 400.00 545.45	11.11 20. 22.22	Assessed to Henry Brimmer. Includes Bldg. $1,500.00
484	Geo. W. Munford and wife to Glazebrook and Thomas	Conveys "Old Home" Tract containing 430.967 acres, about 10 miles above Richmond.	Aug. 11/63	15,083.86	12 1/2	1,206.71	4,310.00	3,103.29	72.	Includes Bldg. $600.00

Deed Book #1.

Plaintiff's Exhibit E-4
Sheet 5

HANOVER COUNTY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
201	Mann S. Valentine, Jr. & wife to Alfred Moses	Conveys 413 1/2 Acres known as "Crany Island"—Adjoining lands of Timberlake & others.	Apl. 30/63	$20,675.00	5 1/2	$3,759.09	$10,337.50	$ 6,578.41	63.64	Bldg. $600.00
457	Hugh Campbell to Thaddeus C. Brown	Conveys 442 Acres more or less, known as "The Grove," on Road from Cedar Creek Meeting House to road from Richmond to Louisa C. H.	June 20/63	9,000.00	7 3/4	1,161.29	4,422.50	3,261.21	73.74	Bldg. $300.00
	Deed Book #2.									
437	W. F. G. Garnett and wife to Wm. Stagg	Conveys 259 Acres more or less on Va. Cent. R. R. adjoining lands of Timberlake—Same sold to G. by Mahlon Terrell Dec. 3, 1859.	June 18/63	10,000.00	7 3/4	1,290.32	3,885.00	2,594.68	66.79	Bldg. $200.00
	Deed Book #1.									
194	Ezekiel Talley (Spc. Comr.) to Jno. P. Ballard	Conveys "Gould Hill" containing 810 1/4 Acres, adjoining "Sommerville (Chas. L. C. Page—later W. B. Newton); Pamunkey River—Sold at Auction in suit of Nelson, &c. v. Burwell, &c.	Nov. 2/63	59,950.58	15	3,996.70	16,200.00	12,203.30	75.32	Bldg. $1,200.00 Assessed to Wm. R. Nelson.

CHESTERFIELD COUNTY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
357	Geo. W. Friend and wife to D. S. Woodbridge	Conveys 150 acres near the C. H.—Adjoins Silas Cheatham, Gregory & Jordan.	June 5/63	$ 5,000.00	7 1/2	$ 666.67	$2,250.00	$1,583.33	70.37	Bldgs. $1,000.00
439	Edwin W. Poindexter & wife to Isaac M. Wolff	Conveys 837 acres more or less adjoining Chas. Friend, Cheatham, Perdue et als.	June 22/63	25,000.00	7.75	3,225.81	10,242.00	7,016.19	68.50	Bldgs. $200.00
558	Jno. H. A. Clay et als. Ex'ors of P. Clay to Francis B. Cheatham	Conveys 195 acres 38 poles called "Peoria," adjoining the lands of Worsham, Cheatham, &c.	June 26/63	1,082.21	7.75	139.64	1,370.00	1,230.36	89.81	No Bldgs. Assessed to Phineas Clay & Marked "Peoria" 1861-2
377	Mary Jewett to Richard G. Elam	Conveys 220 acres lying No. side Jenito Road, adjoining Furcron, &c.	July 9/63	2,000.00	9	222.23	1,320.00	1,097.77	83.16	Bldg. $400.00
393	Thos. W. Nelson and wife to S. Simon	Conveys 100 acres more or less about 4 miles from Manchester, adj. Anderson, &c.	July 28/63	4,000.00	9 10	444.45 400.00	1,000.00	555.55 600.00	55.55 60.	No Bldgs.
513	Chas. T. Scott and wife to James Galloway	Conveys 142 1/2 acres about 5 miles from Petersburg adjoining Wms. Campbell, &c.	Aug. 20/63	5,000.00	12 3/4	384.31	1,425.00	1,040.69	73.03	Bldg. $500.00

PLAINTIFF'S EXHIBIT E-5

Extracts from the Tables of Town Lots in the Land Books of the Commonwealth of Virginia for t

In the 3rd District, Richmond City, the District of F. Butler, Commissioner of the Revenue, with Taxes thereon at one dollar on every hundred d

NAME OF THE PERSON Who by himself or by his tenant has the freehold of the land charged in possession.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.		Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 100 cents on every $100 value thereof.	Explanat ing ye and w lot, and alterat
Gray, Jas., Est.	Richmond	Fee	Pt. 681	130 feet	F & 2d	30,000.	37,150.	371.50	
" " " and R. B. Summerville.	"	"	" 680	44 "	2d	6,000.	7,540.	75.40	
Gray, Jas., Est.	"	"	" 610	52 "	H & 4th	8,000.	11,900.	119.00	
Gray, J. H. & others, Trustees.	"	Trust	" 610	52 "	H	9,000.	12,900.	129.00	
Gray, Jas., Est. and Ro. B. Summerville.			" 348	61	D & 13th	14,000.	21,320.	213.20	[App
Delany, Dennis	Richmond	Fee	Pt. 5	19 feet	Jackson	600.	733.	7.33	
Rutherfoord, Alex'r H.	"	"	" 743	25 "	H	3,000.	4,000.	40.00	
Dunnavant, W. W.	"	"	" 659	60 "	D		2,100.	21.00	
White, Jas. B.	"	"	" 740	21 8-12 "	G & 1st	6,000.	7,000.	70.00	
August, Joseph			" 15	33 "	H	1,250.	1,646.	16.46	From
Trueheart, Jr., Dan'l				33 "	E	4,000.	7,300.	73.00	
Trueheart, Jr., Dan'l (1862)				" "	"	4,000.	7,300.	43.80	From
IN THE 1ST DISTRICT, RICHMOND CITY.									
White, P. K.			Pt. 17	30	Mayo	4,000.	5,500.	55.00	From
IN THE 2ND DISTRICT, RICHMOND CITY.									
Thomas, Wm. A.			Pt. 752	22 "	12, bet H & I.	3,750.	5,290.	52.90	

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Richmond City. In testimony whereof, I hereto s

PLAINTIFF'S EXHIBIT E-5

les of Town Lots in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

rict, Richmond City, the District of F. Butler, Commissioner of the Revenue, with Taxes thereon at one dollar on every hundred dollars value thereof.

of the owner t of land.	Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.		Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 100 cents on every $100 value thereof.	Explanation of alterations during the preceding year, especially from whom transferred, and when and how the owner acquired the lot, and why, and upon what authority any alteration was made.	COUNTY LEV Amount of lev for county pu purposes, pe centum on th State taxes.
mond	Fee	Pt. 681	130 feet	F & 2d	30,000.	37,150.	371.50		
	"	" 680	44 "	2d	6,000.	7,540.	75.40		
	"	" 610	52 "	H & 4th	8,000.	11,900.	119.00		
	Trust	" 610	52 "	H	9,000.	12,900.	129.00		
		" 348	61	D & 13th	14,000.	21,320.	213.20	[Appears 2d District.]	
mond	Fee	Pt. 5	19 feet	Jackson	600.	733.	7.33		
	"	" 743	25 "	H	3,000.	4,000.	40.00		
	"	" 659	60 "	D		2,100.	21.00		
	"	" 740	21 8-12 "	G & 1st	6,000.	7,000.	70.00		
		" 15	33 "	H	1,250.	1,646.	16.46	From R. M. Bridges.	
			33 "	E	4,000.	7,300.	73.00		
			" "	"	4,000.	7,300.	43.80	From D. Trueheart by will.	
		Pt. 17	30	Mayo	4,000.	5,500.	55.00	From Peyton Johnson & wife.	
		Pt. 752	22 "	12, bet H & I.	3,750.	5,290.	52.90		

Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Richmond City. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth o

In Henrico County, within the District of John Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house. Bearing from C. H.	Miles.	Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.
Taylor, W. O.	Richmond	Fee	80	Near 7 Pines.	E.	6	10.	.....
Greenhow, Samuel C., and Bickerton, L. Winston	Richmond	Fee	166	Adj. John Currie.	S. E.	8	8.	.....
Nettles, John	Henrico	Fee	47	Adj. James Carter.	S. E.	8	8.	.....
Poindexter, James H., John E. Wamble & Martin Benton.	Henrico	Fee	12	Rocketts Mills near Gas House.	E.	½	600.	2,000.
IN HENRICO COUNTY WITHIN THE DISTRICT OF J. B. KEESEE.								
Poindexter, Henry P.	Henrico	Fee	4¾	Adj. D. C. Clopton's Est.	N. W.	3	60.	.....
Huffman, Samuel	Henrico	Fee	34	Adj. Reeves Tinsley.	W.	10	10.	.....
Munford, Geo. Wythe	Richmond	Fee	431	Old Home adj. M. Sheppard's Est.	N. W.	12	10.	600.

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony where

Plaintiffs Exhibit
E-5, P. 2.

cts of Lands in the Land Books of the Commonwealth of Virginia for the year of 1863

of John Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
	Bearing from C. H.	Miles.						
Near 7 Pines.	E.	6	10.	.....	800.	8.00		
Adj. John Currie.	S. E.	8	8.	.....	1,328.	13.28		
Adj. James Carter.	S. E.	8	8.	.....	376.	3.76		
Rocketts Mills near Gas House.	E.	½	600.	2,000.	7,200.	72.00		
Adj. D. C. Clopton's Est.	N. W.	3	60.	.....	285.00	2.85		
Adj. Reeves Tinsley.	W.	10	10.	.....	340.00	3.40	From Crawford Alley, &c.	
Old Home adj. M. Sheppard's Est.	N. W.	12	10.	600.	4,310.00	43.10		

certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Extracts from the Tables of Town Lots in the Land Books of the Commonwealth of Virginia for th

In Henrico County, within the Distrct of J. B. Keesee Commissioner of the Revenue, with taxes thereon at forty cents on every hnudred dollars va

NAME OF THE PERSON Who by himself or by his tenant has the freehold of the land charged in possession.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.	Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 40 cents on every $100 value thereof.	Explanatio ing year and whe lot, and alteratio
1862. Juan, Ellis	Henrico	Fee	1 W. 2 No. 29, B. W. Green's Plan.	Sydney	450.	600.	3.60	
1863. Heron, Margarett	Richmond	"	1 N. 1 Part No. 2, Sq. No. 118.	Adams' Plan	.....	200.	2.00	
1863. Dickinson, Alfred E.	Henrico	"	1 W. 2 Grace Street 30x	Sydney	.....	300.	3.00	
1863. Roach, Pleasant	"	"	1 W. 2. Dover Street, 6 & 7, 90x	Sydney	.....	200.	2.00	
1863. Brimmer, Henry	"	"	1 W. 1 Venable Street, 157x173.	Union Hill	1,500.	2,000.	20.00	

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony whereof, I hereto

Plaintiff's Exhibit.
E.-5, P. 3.

own Lots in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

the Distrct of J. B. Keesee Commissioner of the Revenue, with taxes thereon at forty cents on every hnudred dollars value thereof.

Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.	Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 40 cents on every $100 value thereof.	Explanation of alterations during the preceding year, especially from whom transferred, and when and how the owner acquired the lot, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purpurposes, per centum on the State taxes.
Fee	1 W. 2 No. 29, B. W. Green's Plan.	Sydney	450.	600.	3.60		
"	1 N. 1 Part No. 2, Sq. No. 118.	Adams' Plan	.....	200.	2.00		
"	1 W. 2 Grace Street 30x	Sydney	.....	300.	3.00		
"	1 W. 2. Dover Street, 6 & 7, 90x	Sydney	.....	200.	2.00		
"	1 W. 1 Venable Street, 157x173.	Union Hill	1,500.	2,000.	20.00		

of Virginia, do certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Vir

In Henrico County, within the District of John Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hun

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.
					Bearing from C. H.	Miles.		
1863. Valentine, Mann S., Jr.	Richmond	Fee	413½	Crany Island. Adj., A. B. Clarke.	S. E.	8	25.	600.
1863. Garnett, W. F. G.	Henrico	Fee	259	Adj. A. D. Timberlake.	S. W.	7	15.	200.
1863. Nelson, William R.'s Est.	Hanover	Fee	810	Adj. W. B. Newton	S. E.	6	20.	1,200.
1862. Nelson, William R.	"	"	810	" " " "	"	6	20.00	1,200.
1861. Wm. R. Nelson.	"	"	810	" L. A. Page and Wm. B. Newton.	"	6	20.	1,200.
IN HANOVER COUNTY WITHIN THE DISTRICT OF E. C. TAYLOR.								
1863. Campbell, Hugh	Hanover	"	442¾	Adj. C. Vaughan.	W.	20	10.	200.

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Hanover County. In testimony w

Plaintiffs Exhibit
E-5 Sheet 4.

s in the Land Books of the Commonwealth of Virginia for the years 1861, 1862 and 1863.

hn Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY.
	Bearing from C. H.	Miles.						Amount of levy for county purposes, per centum on the State taxes.
Crany Island. Adj., A. B. Clarke.	S. E.	8	25.	600.	10,337.50	103.38		
Adj. A. D. Timberlake.	S. W.	7	15.	200.	3,885.	38.85		
Adj. W. B. Newton	S. E.	6	20.	1,200.	16,200.	162.00		
" " " "	"	6	20.00	1,200.	16,200.	97.20		
" L. A. Page and Wm. B. Newton.	"	6	20.	1,200.	16,200.	64.80		
Adj. C. Vaughan.	W.	20	10.	300.	4,422.50	44.23		

y that the foregoing are true extracts from the Land Books of Hanover County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Vi

In Chesterfield County, within the District of R. D. Flournoy, Commissioner of the Revenue, with Taxes thereon at forty cents on every hun

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.
					Bearing from C. H.	Miles.		
1863. Friend ,Geo. W.	Chesterfield	In fee	150	Silas Cheatham.	E.	½	15.	1,000.
1863. Poindexter, Ed. W.	"	"	772	1 R. Charles W. Friend.	E.	5	12.	200.
1863. Same.	"	"	65	Saml Poindexter.	"	5	15.	.....
1863. Scott, Charles F.	"	"	142	2 R. H. & P. Turnpike.	S. E.	10	10.	500.
				DISTRICT W. G. FLOURNOY.				
1863. Clay, Phenihas, Est.	Chesterfield	In fee	195	Wm. Worsham.	W.	14	7.	.....
1862. Clay, Phenehas, Est.	"	In fee	195	Peoria by Wm. Worsham.	W.	14	7.	.....
1863. Jewitt, Mary	"	"	220	Thos. Fureron.	W.	16	6.	400.
1863. Nelson, Catharine A.	"	In fee	100	Mary Cocke.	N.	10	10.	

I. Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Chesterfield County. In testimony w

Plaintiffs Exhibit
E.-5, P. 5.

Lands in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

D. Flournoy, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
	Bearing from C. H.	Miles.						
Silas Cheatham.	E.	½	15.	1,000.	2,250.	22.50		
1 R. Charles W. Friend.	E.	5	12.	200.	9,267	92.67		
Saml Poindexter.	"	6	15.	.....	975.	9.75		
2 R. H. & P. Turnpike.	S. E.	10	10.	500.	1,425.	14.25		
DISTRICT W. G. FLOURNOY.								
Wm. Worsham.	W.	14	7.	.....	1,370.	13.70		
Peoria by Wm. Worsham.	W.	14	7.	.....	1,370.	8.22		
Thos. Fureron.	W.	16	6.	400.	1,320.	13.20	Transfd from Wm P. Jewitt by will	
Mary Cocke.	N.	10	10.		1,000.	10.00		

ertify that the foregoing are true extracts from the Land Books of Chesterfield County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT E-6

Prepared by
PEIRCE, WATERHOUSE & CO.
Chartered Accountants
51 William Street, New York.

For the Plaintiff.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA ON THE BASIS OF THE FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES OF THE STATE OF VIRGINIA.

PARAGRAPH V OF DECREE.

Ordinary expenses of government from March 19th, 1823, to December 31st, 1860, inclusive			$37,794,211.18
Divided on basis of fair estimated valuation shown in plaintiff's Exhibit E-7 (Slaves excluded from Personal Property):			
Virginia	69.2034%	$26,154,879.14	
West Virginia	30.7966%		$11,639,332.04
Alternative division on basis of fair estimated valuation if slaves are included as personal property, as shown in plaintiff's Exhibit E-7:			
Virginia	72.5780%=$27,430,282.59		
West Virginia	27.4220%		$10,365,928.59

We certify that the above calculations are correctly made from percentage not prepared by us.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & COMPANY,
For the Plaintiff.

PLAINTIFF'S EXHIBIT E-7.

FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES, OF VIRGINIA AND WEST VIRGINIA JUNE 20, 1863, WITH AND WITHOUT SLAVES.

[Prepared for the Plaintiff, and the calculations certified to as correct, by John B. Lightfoot, Jr., Richmond, Virginia. Totals of assessments taken from A. G. Potter's compilation of Auditor's Report of 1861.]

SCHEDULE 1.

SLAVES EXCLUDED.

VIRGINIA.

	Total assessed value for all counties 1861.	Fair Est. Valuation (basis of ½ of assessed value) June 20, 1863.
Real Property—		
Tracts of land and buildings	$237,802,014.94	
Town lots and buildings	55,216,016.36	
	$293,018,031.30	$146,509,015.65
Personal Property—		
Property other than slaves and realty, taxed at 40c. per $100	$101,741,727.40	$ 50,870,863.70
Total	$394,759,758.70	$197,379,879.35

NOTE.—In the foregoing the 1860 figures are shown for Virginia Counties as follows:

1 Alexandria County
2 Elizabeth City County
3 Buchanan County
4 Norfolk City.

All other Virginia Counties and Cities made returns for 1861 and are so shown.

WEST VIRGINIA.

	Total assessed values for those West Virginia Counties which were, for the most part, dominated by Confederate forces 1861.	Fair Est. Valuation (basis of ½ of assessed value) June 20, 1863.
Real Property:		
Tracts land and bldgs.	$27,131,384.35	
Town lots and bldgs.	2,433,774.50	
	$29,565,158.85	$14,782,579.43

Pl. Ex. E-7, p. 2.

Personalty:			
Property other than slaves and real property taxed at 40c. per $100.00.....	$9,659,305.00	$4,829,652.50	$19,612,231.93
Real Property:	As above, for Residue of West Virginia Counties.	(Basis of full assessed value.)	
Tracts land and bldgs.....	$47,295,978.96		
Town lots and bldgs.....	6,739,592.74		
	$54,035,571.70	$54,035,571.70	
Personalty:			
Property other than slaves and realty taxed at 40c. per $100.00.....	$14,189,011.00	$14,189,011.00	68,224,582.70
Total excluding slaves..	$107,449,046.55		$87,836,814.63

PERCENTAGES: EXCLUDING SLAVES.

1863—			
Total fair estimated value, Virginia.....	$197,379,879.35	=	69.2034%
Total fair estimated value, West Virginia.....	87,836,814.63	=	30.7966%
	$285,216,693.98	100	%

Note: In the foregoing, the following are taken as the Counties dominated for the most part by Confederate forces:

1 Jefferson
2 Berkeley
3 Morgan
4 Hampshire
5 Hardy
6 Pendleton
7 Pocahontas
8 Greenbrier
9 Monroe
10 Mercer

The figures for Hampshire are those of 1860.

Of the "residue of West Virginia counties," 1860 figures are taken for the following:

1 Barbour County
2 Brooke "
3 Cabell "
4 Calhoun "
5 Doddridge "
6 Hancock "
7 Harrison "
8 Lewis "
9 Marion "
10 Marshall "
11 Mason "
12 Monongalia "
13 Ohio "
14 Pleasants "
15 Preston "
16 Putnam County
17 Ritchie "
18 Taylor "
19 Tyler "
20 Tucker "
21 Upshur "
22 Wayne
23 Wetzel "
24 Wirt "
25 Wood "
26 Kanawha "
27 Randolph "
28 Boone "
29 Logan "

The remaining W. Va. Counties showed returns for 1861, and these are taken.

Pl. Ex. E-7, p. 3.

SCHEDULE 2.

SLAVES INCLUDED.

VIRGINIA.

	1860. Value	1863. Fair Est. Value
otal number slaves in Va. over 12 years of age, by Counties, 1860 ..... 261,717*		
alue of these at $300 each.....	$78,515,100	.....
air estimated value of same June 20, 1863, on basis of ½.....	.....	$39,257,550
air estimated value at same date of other property as per Schedule 1.	.....	197,379,879.35
otal fair estimated value of all property, including slaves	.....	$236,637,429.35

* For Virginia, the figures concerning slaves are taken from the 1860 tables, ud. Rep. 1861, by what are there termed "Districts." Where a "District" ontains Counties in both States, the figures for the Counties in West Virinia are deducted.

ISTRICT:

				Number.
Tidewater	All	in	Virginia.	103,977
Piedmont	"	"	"	134,424
Valley			20,911	
Deduct for:				
Berkeley	911			
Hampshire	729			
Hardy	645			
Jefferson	2,256			
Morgan	60			
Pendleton	138		4,739	15,172
So. West.....			10,290	
Deduct for:				
Boone	86			
Fayette	127			
Greenbrier	996			
Logan	70			
Mercer	192			
Monroe	611			
McDowell	...			
Raleigh	28			
Wyoming	36		2,146	8,144
Total number slaves in Virginia.....				261,717
These at $300 each				$78,515,100.00

Pl. Ex. E-7, p. 4.

WEST VIRGINIA.

	Value 1860.	Fair Est. Value 1863.
Total number slaves in West Virginia over 12 years age, by Counties, 1860..... 10,476*		
Value of these at $300 each.....	$3,142,800.00	
Fair estimated value of same June 20, '63 on basis of ½.....	.....	$1,571,400.00
Fair estimated value, at same date, of other property, as per Schedule 1...	.....	87,836,814.63
Total fair estimated value, including slaves.....	.....	$89,408,214.63

PERCENTAGES, INCLUDING SLAVES.

1863:

Fair estimated total value, Virginia.....$236,637,429.35 = 72.578%
Fair estimated total value, West Virginia..... 89,408,214.63 = 27.422%

Fair estimated total value both States.....$326,045,643.98 = 100 %

* For West Virginia, the figures and districts are taken as in case of Virginia.

DISTRICT:		Number.
Tidewater	....	....
Piedmont	....	....
Valley:		
Berkeley	911	
Hampshire	729	
Hardy	645	
Jefferson	2,256	
Morgan	60	
Pendleton	138	4,739
So. West:		
Boone	86	
Fayette	127	
Greenbrier	996	
Logan	70	
Mercer	192	
Monroe	611	
McDowell	....	
Raleigh	28	
Wyoming	36	2,1
North West.....All in W. Va.		3,5
Total number slaves in W. Va.....		10,4
These at $300.00 each.....		$3,142,800.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

THE VALUATION OF SLAVES IN 1860 AND 1861.

COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES IN 1862 AND 1863.

DEFENDANT'S EXHIBIT E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

Def. Ex. E-2
Page-1

ONWEALTH OF VIRGINIA VERSUS STATE OF WEST VIRGINIA.

Defendant's Exhibit E-2.

Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

UMBER OF SLAVES IN 1860 AND 1861, BASED ON THE ASSESS-T ROLLS OF COUNTIES FOR WHICH RETURNS WERE FOUND, D THE VALUE THEREOF, COMPUTED FROM THE AVERAGE SSESSED VALUATION OF SLAVES FOR WHICH RETURNS WERE FOUND IN 1862 AND 1863:

	1860		1861	
nty.	No. of slaves.	Value.	No. of slaves.	Value.
IIA:				
nne, ...	2,645	$ 1,326,732	2,739	$ 1,373,882
narle	.....	.....	7,449	3,736,418
ndria, ...	709	355,634	709	355,634
eny, ...	589	295,442	522	261,835
a, ...	4,269	2,141,330	4,195	2,104,212
rst, ...	3,211	1,610,638	3,405	1,707,948
nattox, ...	2,444	1,225,910	2,526	1,267,042
ta, ...	2,545	1,276,572	2,587	1,297,639
aunton, ...	....	.....	441	221,206
.....	475	238,260	517	259,327
rd, ...	5,303	2,659,985	5,660	2,839,056
.....	....	.....	113	56,681
urt, ...	1,728	866,765	1,671	838,174
wick, ...	5,209	2,612,834	5,381	2,699,110
nan, ...	14	7,022	13	6,521
gham, ...	4,827	2,421,223	4,866	2,440,786
ell, ...	4,932	2,473,891	4,981	2,498,470
nchburg, ...	1,822	913,915	1,611	808,078
ne, ...	6,029	3,024,146	6,074	3,046,718
.....	65	32,604	104	52,166
s City, ...	1,783	894,353	1,877	941,503
tte, ...	5,489	2,753,282	5,560	2,788,896
rfield, ...	....	.....	....	.....
.....	1,834	919,934	1,798	901,877
.....	215	107,844	225	112,860
er, ...	3,245	1,627,692	3,259	1,634,714
rland, ...	3,899	1,955,738	3,834	1,923,134
ldle, ...	3,918	1,965,269	4,010	2,011,416
tersburg, ...	3,538	1,774,661	3,453	1,732,025
th City, ...	....	.....	1,196	599,914
.....	3,921	1,966,774	3,873	1,942,697
.....	1,607	806,071	1,611	808,078
er, ...	5,025	2,520,540	5,016	2,516,026
.....	224	112,358	244	122,390
na, ...	2,877	1,443,103	2,883	1,446,113
n, ...	3,330	1,670,328	3,394	1,702,430
ck, ...	844	423,350	824	413,318
nchester, ...	330	165,528	342	171,547
.....	444	222,710	438	219,701
ter, ...	3,038	1,523,861	3,053	1,531,385
nd, ...	3,507	1,759,111	....	.....
.....	280	140,448	294	147,470
.....	981	492,070	997	500,095
ille, ...	2,213	1,110,041	2,280	1,143,648
.....	8,696	4,361,914	8,818	4,423,109
r, ...	4,984	2,499,974	5,115	2,565,634
.....	3,860	1,936,176	4,494	2,254,190
hmond City,	7,639	3,831,722	6,474	3,247,358
.....	2,678	1,343,285	2,779	1,393,946
rd	127,215	$63,811,040	133,705	$67,066,427

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
Forward,	127,215	$63,811,040	183,705	$87,066,42
Highland,	208	104,338	219	109,6
Isle of Wight,	1,040	521,664	2,148	1,077,0
James City,	1,141	572,326	1,162	582,8
Williamsburg,	405	203,148	410	205,6
King and Queen,	3,388	1,649,261	3,406	1,708,6
King George,	2,066	1,036,306	1,984	995,1
King William,	2,916	1,462,666	3,248	1,629,1
Lancaster,	1,605	805,068	1,583	794,0
Lee,	486	243,778	481	241,3
Loudoun,	3,063	1,536,401	3,000	1,504,6
Louisa,	5,429	2,723,186	5,366	2,691,5
Lunenburg,	4,163	2,088,161	4,212	2,112,7
Madison,	2,408	1,207,853	2,373	1,190,2
Mathews,	1,507	755,911	1,479	741,8
Mecklenburg,	7,392	3,707,827	7,506	3,765,0
Middlesex,	1,526	765,442	1,550	777,6
Montgomery,	1,141	572,326	1,173	588,3
Nansemond,	2,571	1,289,614	2,677	1,342,7
Nelson,	3,215	1,612,644	3,158	1,584,0
New Kent,	1,780	892,848	1,808	906,9
Norfolk,	2,887	1,448,119	2,751	1,379,9
Norfolk City,	1,997	1,001,695	1,951	978,6
Portsmouth,	736	369,178	689	345,6
Northampton,	....	.....	2,250	1,128,6
Northumberland,	1,733	869,273	1,823	914,4
Nottoway,	3,856	1,934,170	3,953	1,982,8
Orange,	3,309	1,659,794	3,486	1,748,5
Page,	495	248,292	483	242,3
Patrick,	1,026	514,642	1,024	513,6
Pittsylvania,	7,417	3,720,367	7,171	3,596,9
Danville,	763	382,721	573	287,4
Powhatan,	3,177	1,593,583	3,156	1,583,0
Prince Edward,	4,352	2,182,963	4,279	2,146,3
Prince George,	2,894	1,451,630	2,926	1,467,6
Prince William,	1,269	636,530	1,243	633,6
Princess Anne,	1,818	911,909	224	112,3
Pulaski,	918	460,469	928	465,6
Rappahannock,	1,721	863,254	1,748	876,7
Richmond,	1,373	688,697	1,384	694,2
Roanoke,	1,603	804,065	1,580	792,6
Rockbridge,	2,328	1,167,725	2,273	1,140,2
Rockingham,	1,268	636,029	1,241	622,6
Russell,	516	258,826	573	287,4
Scott,	324	162,518	331	166,0
Shenandoah,	484	242,774	457	229,2
Smyth,	508	254,813	500	250,8
Southampton,	3,174	1,592,078	3,141	1,575,4
Spottsylvania,	2,382	1,194,811	3,409	1,709,9
Fredericksb'g,	724	363,158	685	343,6
Stafford,	1,575	790,020	1,545	774,9
Surry,	1,552	778,483	1,544	774,4
Sussex,	3,604	1,807,766	3,598	1,804,7
Tazewell,	676	339,082	670	336,0
Warren,	804	403,286	822	412,3
Warwick,	602	301,963	616	308,9
Washington,	1,319	661,610	1,375	689,6
Westmoreland,	2,088	1,047,341	3,153	1,581,6
Wise,	34	17,054	38	19,0
Wythe,	1,116	559,786	1,120	561,8
York,	999	501,098	990	496,5
Total,	243,986	$122,383,375	253,351	$127,0

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
WEST VIRGINIA:				
Barbour,	68	$ 33,201	....	.....
Berkeley,	911	444,796	926	$ 452,120
Boone,	86	41,990	....	.....
Braxton,	54	26,366	57	27,830
Brooke,	5	2,441	....	.....
Cabell,	216	105,462	....	.....
Calhoun,	6	2,930	....	.....
Clay,	25	12,206	9	4,394
Doddridge,	17	8,300	....	.....
Fayette,	127	62,008	124	60,543
Gilmer,	21	10,253	28	13,671
Greenbrier,	996	486,297	984	480,438
Hampshire,	729	355,934	....	.....
Hancock,	1	488	....	.....
Hardy,	645	314,921	641	312,968
Harrison,	292	142,569	....	.....
Jackson,	42	20,507	41	20,018
Jefferson,	2,256	1,101,492	2,256	1,101,492
Kanawha,	1,238	604,454	1,237	603,965
Lewis,	103	50,290	....	.....
Logan,	30	14,648	....	.....
McDowell,	....	.....	....	.....
Marion,	46	22,460	....	.....
Marshall,	20	9,765	....	.....
Mason,	200	97,650	....	.....
Mercer,	192	93,744	191	93,256
Monongalia,	69	33,689	....	.....
Monroe,	611	298,321	627	306,133
Morgan,	60	29,295	59	28,807
Nicholas,	85	41,501	76	37,107
Ohio,	21	10,253	....	.....
Wheeling,	2	977	....	.....
Pendleton,	138	67,379	139	67,867
Pleasants,	7	3,418	....	.....
Pocohontas,	....	.....	139	67,867
Preston,	41	20,018	....	.....
Putnam,	353	172,352	345	168,446
Raleigh,	28	13,671	35	17,089
Randolph,	107	52,243	20	9,765
Ritchie,	12	5,859	....	.....
Roane,	35	17,089	37	18,065
Taylor,	68	33,201	....	.....
Tucker,	17	8,300	....	.....
Tyler,	7	3,418	....	.....
Upshur,	97	47,360	....	.....
Wayne,	74	36,131	77	37,595
Webster,	....	.....	....	.....
Wetzel,	8	3,906	....	.....
Wirt,	17	8,300	....	.....
Wood,	82	40,037	....	.....
Wyoming,	36	17,577	35	17,089
Total,	10,301	$5,029,467	8,083	$3,946,525

NOTE: The valuation of slaves for 1860 and 1861 is based on the average assessed valuation of slaves in 1862 and 1863, as shown by the original assessment rolls of counties reporting both the number and value.

Such values are:

For Virginia,	$501.60
For West Virginia,	488.25

Certified Correct:

CLIFFORD E. SCOVILLE, THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff objects to the use of the average assessed valuation of Slaves in 1862 and 1863 as a basis of their assessed valuation in 1860 and 1861, as the Records of the Commonwealth of Virginia clearly show that slaves were assessed in the last mentioned years at 40c per $100 of value and as the tax levied on all slaves over 12 years was $1.20, their assessed valuation was $300; and for the further reason that in 1862 and 1863 the assessed value of the slaves in Virginia was estimated with reference to Confederate money as a standard of value.

We have checked all figures in this exhibit consisting of pages 1, 2, and 3, and find them to be correct.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

DEFENDANT'S EXHIBIT E 3.

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Defendant's Exhibit E-3

DEFENDANT'S ALTERNATIVE METHOD OF DETERMINING

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA AT JUNE 20TH, 1863.

Treasury Department
Office of the Government Actuary.
Form No. 11-Ed. 5-17-95-1,000.

COPY OF A STATEMENT FURNISHED BY THE TREASURY DEPARTMENT OF THE UNITED STATES

OF THE

Average Relative Values of Gold and U. S. Paper Currency in the New York Market from the Suspension to the Resumption of Specie Payments, during the Period of Seventeen Years from 1862 to 1878, both inclusive—Prepared by the U. S. Treasury Department.

CURRENCY VALUE OF GOLD.

Table showing the Average Value in Currency of One Hundred Dollars in Gold in the New York Market, by Months, Quarter years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
January	102.5	145.1	155.5	216.2	140.1	134.6	138.5	135.6	121.3	110.7	109.1	112.7	111.4	112.5	112.8	106.3	102.1
February	103.5	160.5	158.6	205.5	138.4	137.4	141.4	134.4	119.5	111.5	110.5	114.1	112.3	114.5	113.4	105.4	102.
March	101.8	154.5	162.9	173.8	130.5	135.	139.5	131.3	112.6	111.	110.1	115.5	112.1	115.5	114.3	104.8	101.2
April	101.5	151.5	172.7	148.5	127.5	135.6	138.7	132.9	113.1	110.6	111.1	117.8	113.4	114.8	113.	106.2	100.6
May	103.3	148.9	176.3	135.6	131.8	137.	139.6	139.3	114.7	111.5	113.7	117.7	112.4	115.8	112.6	106.9	100.7
June	106 5	144.5	210.7	140.1	148.7	137.5	140.1	138.1	112.9	112.4	113.9	116.5	111.5	117.	112.5	105.4	100.8
July	115.5	150.6	258.1	142.1	151.6	139.4	142.7	136.1	116.8	112.4	114.3	115.7	110.	114.8	111.9	105.4	100.5
August	114.5	125.8	254.1	143.5	148.7	140.8	145.5	134.2	117.9	112.4	114.4	115.4	109.7	113.5	111.2	105.	100.6
September	118.5	134.2	222.5	143.9	145.5	143.4	143.6	136.8	114.8	114.5	113.5	112.7	109.7	115.8	110.	103.3	100.4
October	128.5	147.7	207.2	145.5	148.3	145.5	137.1	130.2	112.8	113.2	113.2	108.9	110.	116.4	109.7	102.8	100.6
November	131.1	148.	233.5	147.	143.8	139.6	134.4	126.2	111.4	111.2	112.9	108.6	110.9	114.7	109.1	102.8	100.2
December	132.8	151.1	227.5	146.2	136.7	134.8	135.2	121.5	110.7	109.5	112.2	110.	111.7	113.9	107.9	102.8	100.1
First quarter-year	102.6	153.4	159.	198.5	136.3	135.7	139.8	133.8	117.8	111.1	109.8	114.1	111.9	114.2	113.5	105.5	101.7
Second quarter-year	103.8	148.3	186.6	141.4	135.9	136.7	139.5	136.7	115.6	111.5	112.9	117.3	112.4	115.9	112.7	106.2	100.7
Third quarter year	116.2	130.2	244.9	143.2	148.6	141.2	143.9	135.7	116.5	113.1	114.1	114.6	109.8	114.7	111.	104.6	100.5
Fourth quarter-year	130.6	148.9	222.7	146.2	142.9	139.5	135.6	126.	111.6	111.2	112.8	109.2	110.9	115.	108.9	102.8	100.3
First half-year	103.2	150.8	172.8	169.9	136.1	136.2	139.6	135.3	115.7	111.3	111.4	115.7	112.2	115.1	113.1	105.9	101.2
Second half-year	123.4	139.6	233.8	144.7	145.8	140.3	139.8	130.8	114.	121.1	113.4	111.9	110.3	114.8	109.9	105.7	100.4
Calendar year	113.3	145.2	203.3	157.3	140.9	138.2	139.7	133.	114.9	111.7	112.4	113.8	111.2	114.9	111.5	104.8	100.8
Fiscal year ended June 30th	.....	137.1	156.2	201.9	140.4	141.	139.9	137.5	123.3	112.7	111.8	114.6	112.	112.7	113.9	107.9	102.5

GOLD VALUE OF CURRENCY.

able showing the Average Value in Gold of One Hundred Dollars in Currency in the New York Market, by Months, Quarter-years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868.	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
nuary	97.6	68.9	64.3	46.3	71.4	74.3	72.2	73.7	82.4	90.5	91.7	88.7	89.7	88.9	88.6	94.	97.9
ebruary	96.6	62.3	63.1	48.7	72.3	72.8	70.7	74.4	83.7	89.7	90.7	87.6	89.1	87.3	88.2	94.8	98.
arch	98.2	64.7	61.4	57.5	76.6	74.1	71.7	76.2	88.8	90.1	90.8	86.6	89.2	86.6	87.5	91.4	98.8
pril	98.5	66.	57.9	67.3	78.6	73.7	72.1	75.2	88.4	90.4	90.	84.9	88.2	87.1	88.5	94.2	99.4
ay	96.8	67.2	56.7	73.7	75.9	75.	71.6	71.8	87.2	89.7	88.	85.	89.9	86.3	88.8	83.5	99.3
ne	93.9	69.2	47.5	71.4	67.2	72.7	71.4	72.4	88.6	89.	87.8	85.8	90.	85.4	88.9	94.9	99.2
ly	86.6	76.6	38.7	70.4	66.	71.7	70.1	73.5	85.6	89.	87.5	86.4	91.	87.2	89.4	94.8	99.5
ugust	87.3	79.5	39.4	69.7	67.2	71.	68.7	74.5	84.8	89.	87.4	86.7	91.2	88.1	89.9	95.2	99.5
ptember	84.4	74.5	44.9	69.5	68.7	69.7	69.6	73.1	87.1	87.3	88.1	88.7	91.2	86.4	90.9	96.8	99.6
tober	77.8	67.7	48.3	68.7	67.4	69.7	72.9	76.8	88.7	88.3	88.3	91.8	91.	85.9	91.2	97.3	99.5
vember	76.3	67.6	42.8	68.	69.5	71.6	74.4	79.2	89.8	89.9	88.6	92.1	90.2	87.2	91.7	97.3	99.8
ecember	75.6	66.2	44.	68.4	73.2	74.2	74.	82.5	90.3	91.5	89.1	90.9	89.6	87.8	92.6	97.5	99.9
First quarter-year	97.5	65.2	62.9	50.4	73.3	73.7	71.5	74.7	84.9	90.	91.	87.6	89.3	87.6	88.1	94.8	98.3
Second quarter-year	96.3	67.4	53.6	70.7	73.6	73.2	71.7	75.2	88.	89.7	88.6	85.3	89.	86.3	88.7	94.2	99.3
Third quarter-year	86.1	76.8	40.8	69.8	67.2	70.8	69.5	73.7	85.8	88.4	87.6	87.3	91.1	87.2	90.1	95.6	99.5
Fourth quarter-year	76.6	67.2	44.9	68.4	70.	71.8	73.7	79.4	89.6	90.	88.7	91.6	90.2	86.9	91.8	97.3	99.7
First half-year	96.9	66.3	57.9	58.9	73.5	73.4	71.6	73.9	86.4	89.8	89.8	86.4	89.2	86.9	88.4	94.4	98.8
Second half year	81.	71.6	42.8	69.1	68.6	71.3	71.5	76.5	87.7	89.2	88.2	89.4	90.7	87.1	90.9	96.4	99.6
Calendar year	88.3	68.9	49.2	63.6	71.	72.4	71.6	75.2	87.	89.5	89.	87.9	89.9	87.	89.8	95.4	99.2
Fiscal year ended June 30th	....	72.9	64.	49.5	71.2	70.9	71.5	72.7	81.1	88.7	89.4	87.5	89.3	88.8	87.8	92.7	97.6

Defendant's Exhibit E-3.

Defendant's Alternative Method of Determining

Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia.

At June 20th, 1863.

VIRGINIA.			WEST VIRGINIA.		
al Valuation of Real Property at latest obainable assessment, as per agreed summary.	$296,085,460.31		Total valuation of Real Property, at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.....	$29,546,249.20	
laintiff claims that a fair estimated valuation s 50% of this assessed valuation.....		$148,042,730.15			
otal valuation of Personal Property, including slaves but excluding Income at latest obtainable assessment, as per agreed summary	403,696,228.59				
laintiff claims that a fair estimated valuation s 25% of this assessed valuation.....		100,924,057.15			
Total		$248,966,787.30	Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation.....		$14,773,124.60
SUMMARY.			Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
laintiff claims the fair estimated valuation f Property, Real and Personal, in Virginia, s noted above, to be.....	248,966,787.30	79.2765%	Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97
efendant claims the valuation of Property, eal and Personal, in West Virginia, estimated on the basis, and according to the rinciple, adopted by the Plaintiff, to be s per contra.....	65,081,874.01	20.7235%	Total as per agreed summary	$82,449,252.04	
Total	$314,048,661.31	100 %	Total fair estimated valuation of Real Property, as noted above		$51,382,002.57
efendant further claims that the Ordinary xpenses of Government from March 19th 863, to December 31st, 1860, amount to....	$ 12,207,684.29				
shown in Joint Exhibit D-1 and that he amount to be charged to West Virginia, omputed on the principle adopted by the laintiff, is 20.7235%, as above.....		$ 3,773,269.45	Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
			Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
			Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69
			Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties..	1,805,796.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00
			Total as per agreed summary	$30,394,487.21	
			Total fair estimated valuation of Personal Property, includ-		

rtified Correct as to amounts and calculations.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,

For the Defendant.

laintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of eal and Personal Property being reduced to 9.2% and to the use of this amount as a AIR ESTIMATE of the valuation; objects o Slaves being considered Personal Property; objects to the use of percentages so btained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Vir-

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$122,383,375 253,351 $127,

$122,383,375	253,351	$127,080,[illegible]

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...able assessment, as per agreed summary	$296,085,460.31	
...intiff claims that a fair estimated valuation ...s 50% of this assessed valuation.....		$148,042,730.15
...tal valuation of Personal Property, includ...ng slaves but excluding Income at latest ...btainable assessment, as per agreed sum...ary	403,696,228.59	
...intiff claims that a fair estimated valuation ...is 25% of this assessed valuation.....		100,924,057.15
Total		$248,966,787.30

SUMMARY.

...intiff claims the fair estimated valuation ...f Property, Real and Personal, in Virginia, ...s noted above, to be.....	248,966,787.30	79.2765%
...fendant claims the valuation of Property, ...eal and Personal, in West Virginia, esti...ated on the basis, and according to the ...rinciple, adopted by the Plaintiff, to be ...s per contra.....	65,081,874.01	20.7235%
Total	$314,048,661.31	100 %
...fendant further claims that the Ordinary ...xpenses of Government from March 19th ...823, to December 31st, 1860, amount to....	$ 18,207,684.29	
...shown in Joint Exhibit D-1 and that ...he amount to be charged to West Virginia, ...omputed on the principle adopted by the ...laintiff, is 20.7235%, as above.....		$ 3,773,269.45

...rtified Correct as to amounts and calcula...ions.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,

For the Defendant.

...intiff agrees that the above figures are cor...ect and that all calculations are correctly ...ade but objects to the total assessment of ...eal and Personal Property being reduced to ...9.2% and to the use of this amount as a ...AIR ESTIMATE of the valuation; objects ...o Slaves being considered Personal Prop...rty; objects to the use of percentages so ...btained and objects to the amount of Ordi...ary Expenses Defendant uses in determin...g the proportion chargeable to West Vir...inia.

...tified Correct as to figures and Calculations.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.....	$29,546,249.20		
Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation.....		$14,773,124.60	
Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97	
Total as per agreed summary	$82,449,252.04		
Total fair estimated valuation of Real Property, as noted above			$51,382,002.57
Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00		
Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69	
Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties..	1,805,796.00		
Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00	
Total as per agreed summary	$30,394,487.21		
Total fair estimated valuation of Personal Property, including Slaves, but excluding income as noted above.....			13,699,871.44
Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis and according to the principle adopted by the Plaintiff, to be			$65,081,874.01

Other Evidence and Proceedings Relating to Paragraph V of the Decree.

[*Vol. 5. Nov. 16, 1909.*]

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH V OF THE DECREE.

ARTHUR G. POTTER,
testified as follows: 66

By Mr. Anderson:

Q. Please examine this schedule, marked "Plaintiff's Exhibit E 1," and state what that statement embraces, the sources from which it was derived, and your knowledge as to the correctness of the statement in general and in particular.

A. The statement is a division of the sum total of the ordinary expenses of Government in the preceding exhibit, namely, forty million dollars, on the basis of a fair estimated valuation of the real and personal property. The estimated valuations of the real and personal property are shown in what we call Article II—I believe it is Exhibit B—and is based on the same figures that were used in that schedule.

Q. That is, you predicate this result from the statements contained in Plaintiff's Exhibit B 1?

A. Yes, sir.

Mr. Robinson: Partially.

Mr Anderson: And upon the population.

The Special Master: Yes; so far as it is necessary.

By Mr. Anderson:

Q. This includes personal property as well as real property?

A. Personal property.

Q. How did you estimate the value of the personal pro- 67
perty, and of what date, and how did you ascertain it?

A. Certain of the counties made returns of personal property in 1863, and certain of them did not. We took those that did make returns, and from the—do you want me to explain the exact method by which I arrived at it?

Q. I did not ask that now. The question is whether that statement is correct, and from what sources it was derived.

The Special Master: Your question would involve all the answer he has given. You might as well state it fully and give your reasons as you go along. Put it in, concretely and concisely.

A. We had the personal property returns in 77 counties for 1863. I understand these returns were in Confederate money. We reduced that to gold—

By The Special Master:

Q. As of what date?

A. As of February, 1863, which was the date of the assessment. On that date we ascertained that one dollar in gold was worth four dollars Confederate. We reduced the Confederate valuation to gold. Then we took the valuation of 1861 and determined the percentage of shrinkage.

Q. Do you apply the same percentage to the remaining counties that appeared to apply to the 77?

A. No; there was an intermediate step. We determined the percentage of shrinkage. Then we took the 33 counties of 1861, and applied that percentage of shrinkage and got at the value of those for 1863. Adding the two together gave us the valuation of personal property in 1863, as of February, which was the date 68
of the assessment.

By Mr. Conrad:

Q. Are not those explanations you are now making all set out and printed in that slip itself?

A. Yes, sir; on page 3.

By Mr. Anderson:

Q. What do you know as to the correctness of the statements in that schedule, Mr. Potter? Did you verify them?

A. I made these personally—all of them.

Q. Did you compare them with the original records?

A. Yes, sir.

Q. State whether that is a correct statement of the principles upon which it is stated, as set for forth upon the paper itself.

A. I believe it is.

Mr. Anderson: That paper may be filed. That is all we think it will be necessary to introduce in support of this paragraph. It is based upon what is known as the Commissioner of Revenue—the land books returned by the Commissioner of Revenue for each year.

The Special Master: They are public records, open to the inspection of the other side?

Mr. Anderson: Yes, sir; open to the inspection of the other side.

The Special Master: Do you wish to ask any questions, gentlemen?

By Mr. Spooner:

Q. I did not understand exactly how you got at that $23,-
042,230, estimated personal property in Virginia and $24,406,- 69
681, in West Virginia.

A. The assessed valuation of personal property in West Virginia I took from the reports of the Auditor. I will have to look at my papers, if you will permit me.

Q. Certainly.

A. The 33 counties in West Virginia I took from the West Virginia's Auditor's report, in the West Virginia Journal of 1863, page 324, assessments of 1862.

Q. What is the date of that Auditor's report?

A. Auditor's report, Journal of 1863.

Q. You do not know the date?

The Special Master: You mean the house journal. You say the journal of 1863.

A. No; it is a volume of Auditor's reports that I found in the library at Charleston.

Mr. Conley: It is published in the Journal of the House of Delegates or Senate.

A. The Journal of 1863.

By Mr. Anderson:

Q. You mean the ledger of 1863, do you not?

A. All my memoranda show are the Auditor's report in the Journal of 1863—that is right; the Journal of the House of Delegates.

By Mr. Spooner:

Q. How much did you find to be the value of personal property in Virginia without the reduction to the basis of the value in Confederate money?

A. In 73 counties it was $70,566,000.

Q. Can you state separately how much of that was money 70
and how much was other personal property?

A. No, sir; the reports merely give it in totals.

Mr. Anderson: The report only gives the totals.

A. Only the totals. I do not give any details in that.

By Mr. Conrad:

Q. Your report shows the sources of your information, where the sources can be found, does it not?

A. Yes, sir.

By Mr. Spooner:

Q. What percentage did you reduce the valuation of personal property in Virginia to as contradistinguished from West Virginia?

A. What percentage?

Q. Yes; you said it was $77,000,000. You brought it down to $23,000,000 and something. What was the principle on which you made that reduction? I only want to get at your methods?

A. The $70,000,000, was reduced to gold on a basis of four to one.

Q. You assumed that all of that $70,000,000 was money?

A. Oh, no; personal property—the value of personal property in 73 Virginia counties as stated in the report.

By the Special Master:

Q. Your assumption is it was computed in Confederate money?

A. Not my assumption; no, sir. I did not assume anything. I was informed by the counsel for Virginia. 71

Q. It is immaterial as to how you get it. You proceeded on the hypothesis that the personal property was estimated in Confederate money?

A. That the assessments were made in Confederate money.

By Mr. Spooner:

Q. You did not get that very important information, then, either from the published reports or from any records of the State?

A. No, I did not.

By the Special Master:

Q. That is, was there any public document that made that statement?

A. No, sir; none that I have seen.

Mr. Conrad: The Master would almost take judicial notice of that, as a matter of history, pretty much on the basis that Chief Justice Chase proceeded in Harrington against Smith, in North Carolina. The published history of the country shows that the only currency in this region at that period was the Confederate currency. Gold was a commodity. Greenbacks were a commodity. Confederate money alone was current here, and all the assessments of property were made in Confederate money. I say the Master might safely take judicial notice of that as a matter of public history.

Mr. Spooner: I was only trying to get at the facts as to how these estimates were made.

Mr. Anderson: We call the attention of your Honor and of counsel to the fact that our statement with regard to all of this personalty as to which this scale, as it is called, applied, reducing the value estimated in Confederate money to the value estimated 72
in lawful money, in specie—not gold, but specie, gold and silver being then on a par with each other—is supported by the legislation at that time. The legislation of the Richmond Government, which controlled this whole region during all this period, provided that the land assessments should remain the same, the assessment of 1856, subject to such changes as might be necessitated by reason of new improvements or the destruction of improvements, while personal property was assessed annually at its then current value; and taxes, by the express mandate of the statute, were payable in Confederate money, defining what Confederate money was. Taxes were payable in Confederate money and the assessments, as will appear from comparison, were made in Confederate money. The assessments, I will say to my friends, were very much larger in nominal amount in 1863 than they were prior to the beginning of the war, but very much smaller in the quantity of property, as will be seen on an examination of the Commissioner's books, because of the fact that by the disastrous operation of the war then prevailing throughout this territory, there was an enormous destruction of personal property, and it will be found also that there was a great diminution in the quantity of personal property that was assessed, while there was a nominal appreciation in values, a horse being estimated to be worth, in 1861, in the then lawful money, from $20 to $50, and in 1863, $150 or $200, perhaps—certainly $150, an increase of five hundred per cent. sometimes, in the subject of taxation
in the nominal assessment, while the real value had been de- 73
preciated very greatly. The witness has taken the very highest value at which Confederate money was sold during that period, four for one, while the fact is, I want to say to my friends, that in June, when the assessment was in fact made, the value was eight or nine to one. The fortunes of the Confederacy were waning. Stonewall Jackson fell in the month of May, and from that time the value of Confederate money, which depended entirely upon the ultimate success of the Confederate Government, depreciated rapidly; but we take the assessment at the very highest rate in Virginia at that time, four for one.

The Special Master: The important point at this stage of the hearing is that the other side should be advised of the hypothesis and the theory upon which the statement is predicated. Later, if they think they have occasion to criticize either the hypothesis or the

report, I will hear them. Of course they now have notice of exactly what your contention is.

Mr. Spooner: I would like to ask another question.

Mr. Anderson: The first act as to Confederate currency was in 1862, and the last was in 1863, before this assessment became effective.

By Mr. Spooner:

Q. Did you make any deductions in the estimates of the value of personal property in West Virginia on account of the appreciation of gold?

A. We made no deduction of any kind for West Virginia 74
counties. The report states that the figures were taken from the Auditor's report of 1862.

By Mr. Conrad:

Q. Is that West Virginia now?

A. Yes; and a few of the counties which were not returned in that report from the old Virginia statements of 1861.

Mr. Mollohan: Not West Virginia?

Mr. Anderson: Yes; West Virginia.

Mr. Mollohan: No; there was no West Virginia then.

Mr. Conrad: That raises a large question, that we are not going into at this time.

Mr. Anderson: It refers to the counties now constituting West Virginia.

Mr. Mollohan: Counties that you owned yourself.

Mr. Conrad: Who appropriated the money derived from taxation by those assessments?

Mr. McClintic: The State of Virginia.

Mr. Anderson: Are there any other questions, gentlemen?

Mr. Spooner: I did not mean to interrupt you.

By Mr. Anderson:

Q. I understand, Mr. Potter, you said this statement is correct.

A. Yes, sir.

Mr. Anderson: I will ask that it be filed.

(The paper referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Fair Estimated valuation of the property, real and personal. Article V." is filed herewith, marked "Plaintiff's Exhibit E-1.") 75

Mr. Anderson: We are through on that statement, if the Master please, except that I wish to give your Honor—and I will furnish a

copy of it to my friends on the other side—a citation of the acts of the Richmond Government of Virginia, providing that all taxes should be paid in Confederate money, and also the act providing that all the lands should continue at the former antebellum assessments, while personal property should be reassessed annually at its annual value.

(The paper referred to was subsequently forwarded by Mr. Anderson, and is filed herewith, marked "Plaintiff's Exhibit E-2.")

[*Vol. 4. May 5, 1909. Cross Examination A. G. Potter.*] 377

Mr. Carlisle: There are some questions I want to ask the witness at this time.

By Mr. Carlisle:

Q. Mr. Potter, I will not go through the entire process adopted by you in ascertaining the assessed value either of the land or the personal property in these two States.

Mr. Anderson: Which schedule are you looking at?

Mr. Carlisle: Schedule 5.

By Mr. Carlisle:

Q. Do you find that the assessed value of personal property in what now constitutes the State of Virginia in 1863 was $23,042,230, and you find that the assessed value of personal property in West Virginia at the same time was $24,406,681, or considerably over $1,000,000 more than the assessed value of the personal property in the State of Virginia, with its hundred counties. 378 In order to ascertain that result, you took the assessed value of the personal property as shown by such records as were accessible to you, and you divided that by four. Why did you do that?

A. Because I was informed by counsel that this assessment was in Confederate money in Virginia.

Q. Is that all the information you had upon the subject? Have you seen any law of the State of Virginia authorizing assessments to be made in Confederate money?

A. No, sir.

Q. There was a law in the State, which we all know, authorizing the owner to pay his taxes in Confederate money, but there was no law authorizing the assessment in Confederate money.

Mr. Conrad: But we all know, as a matter of fact, that it was assessed in Confederate money.

Mr. Carlisle: You say you know it as a matter of fact. I do not know it.

Mr. Conrad: We can prove it.

Mr. Carlisle: I see by comparing that assessment with the assessment in West Virginia that personal property is assessed about the same.

Mr. Anderson: Both those were Confederate assessments.

The Special Master: Where does the statement appear in this report about his having divided by four?

Mr. Carlisle: In the whole statement here.

The Witness: It is on the last page.

By Mr. Carlisle:

Q. There was a law authorizing the taxpayer to discharge 379
his obligations to the State for taxes on personal property by paying in Confederate money, but no law in regard to the assessment in Confederate money. Now, as a matter of fact, do you know whether the taxes on the land were also paid in Confederate money?

A. I do not.

The Special Master: The question now is whether the witness has any knowledge of how the taxes were paid.

By Mr. Carlisle:

Q. Why did you divide the valuation on personal property by four and not divide the assessment on the land by four, although they were on the same footing?

Mr. Conrad: There was no assessment of land after 1866. Personal property was assessed every year.

Mr. Carlisle: But there was no law to assess it in Confederate money.

Mr. Conrad: Land was not assessed in Confederate money.

Mr. Carlisle: Neither was personal property, according to the law.

Mr. Conrad: Yes; it was. We can explain it.

Mr. Carlisle: It certainly requires explanation.

Mr. Anderson: Land was assessed in 1856, the last time, in gold.

Mr. Conrad: The first case ever decided by the Chief Justice of the United States in North Carolina on circuit, was to the effect that although a bond was payable absolutely in money, still despite the seal, it was a Confederate transaction. There was no statute at all providing for it. There was no law that authorized them to do it. All business transactions in Virginia were
on the basis of Confederate money, and it would have been 380
impossible after 1861 to assess personal property on green-

backs, gold, silver or anything but what was the sole money we had here. You could not have assessed it on a gold basis or a greenback basis. We did not have them. Their value here was a purely commercial value.

Mr. Carlisle: I do not see, Major, that that answers my question at all. Of course it is a well known rule of law that if transactions take place between individuals where the *de facto* government is existing, its law and customs control that transaction.

Mr. Conrad: Of course. Transactions that take place between the State government and its own citizens would not be put upon a different footing from transactions between citizens.

Mr. Carlisle: No; but there is no evidence here—

The Special Master: What Mr. Carlisle wants in the first instance is to develop the facts upon which the report is predicated. Then later as between yourselves if you do not agree, you will discuss your various contentions.

Mr. Carlisle: Yes, the argument will come hereafter.

By Mr. Carlisle:

Q. It is a fact, then, that you divided the assessed valuation of the personal property by four?

A. Yes, sir.

Q. And therefore reduced it from about $73,000,000 down to $23,000,000. That is a fact?

A. Yes, sir.

Q. And it is a fact that you did not divide the assessed valuation of the real estate by four?

A. Yes, sir.

Q. But you took them just as they stood?

A. Yes, sir. 381

Q. Just as you found them on the books?

A. Yes; just as they were reported on the land books and other sources of information from which we got these figures.

Mr. Carlisle: That is all I want—the facts.

The Special Master: Then, as I understand, except that the defense may wish to put a question or two that they have overlooked, this concludes the cross examination of Mr. Potter?

Mr. McClintic: No, we have schedules 6 and 7 yet, but we will not be long on those in the morning.

The Special Master: Very well, then, we will suspend here until 10 o'clock in the morning. I would like to have counsel for the defense and for the plaintiff go over these various schedules that have been presented so that between now and to-morrow morning the exhibits may be paged, so that they will be harmonious through-

out, and we may refer to them later by exhibit and page. Mr. Dixcy has already paged the memoranda presented by the defendant.

The hearing, at 4:55 o'clock P. M., was adjourned until Thursday, May 6, 1909, at 10 o'clock A. M.

[*Vol. 5. May 6, 1909.*] 464

The Special Master: If there are any other documents of the same miscellaneous character we will mark them in the same way. Have you anything more, Brother Conrad? 465

Mr. Conrad: We are conferring as to whether a certain matter is properly in rebuttal or not. We know as a matter of fact that the assessments of personal property made from 1862 to the close of the war, were made based on Confederate money. It has been objected that there was no act authorizing that, but it is so, and it would have been impossible to have had an assessment on the gold basis or the greenback basis, beause we had none of that money in the State at that time.

Mr. Carlisle: From our inspection of the assessment of personal property at that time, we do not think that the value put upon it indicated that it was on a Confederate money basis.

Mr. Conrad: Well, we will reserve that evidence.

Mr. Anderson: That will be in rebuttal.

The Special Master: Then it is understood that as to that phase you rest until you hear from the other side?

Mr. Anderson: Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*] 546

Mr. McClintic: We now offer Defendant's Exhibit E-1.

(The paper referred to was received in evidence, marked "Defendant's Exhibit E-1.") 547

By Mr. McClintic:

Q. State, Mr. Dixcy, if you made up Defendant's Exhibit E-1.

A. Yes, sir; the schedules as presented were prepared by me, and the work was done under my direction and supervision, and bears my signature.

Q. The totals and percentages and other things therein were all made by you, were they?

A. Yes, sir; on page 2—entirely by me, and verified.

Q. The items appearing on page 3 and the following pages, as to the amount of the valuation of property—were they verified by you?

A. As to totals, yes, sir.

Q. Please state to the Commissioner what they were compiled from, beginning on page 3, as to real estate in Virginia?

A. The first item, for Alexandria, was taken from the auditor's report of 1860. The next 15 items, being the names of various counties, were taken from the auditor's report for 1861.

Q. That is shown on the face of the report itself.

A. That is shown on the schedule. The next three items are from the land books of 1861. I may say that we attempted to—

By the Special Master:

Q. It is all taken from the sources indicated in the statement?

A. Yes, sir. The endeavor was to obtain all the items that we could from the land books. We took them from other sources only where the land books were not available.

Q. The land books I understand are the duplicates of the original assessments?

Q. Made for the years indicated? 548

A. Yes, sir.

Q. And where you have not made statements here predicated upon the land books of 1863, is that because you could not find the land books for that year?

A. We were unable to find them; yes, sir.

Q. In that event, you found the land books for the nearest year?

A. The land books for the nearest year, or the auditor's report for the nearest year. We tried to obtain the assessed valuation as near to the date called for by the decree, as possible.

By Mr. McClintic:

Q. On page 6, Mr. Dixey, comes the assessed valuation of the personal property in Virginia. Please state to the court how that was made, and from what sources?

A. That was made, as indicated on the face of the schedule, from the property books, in almost every case, as regards what is now the State of Virginia. The item at the end, for Chesterfield, was taken from the Auditor's report of 1863.

The Special Master: At the end, where?

A. At the end of the schedule on page 7.

Q. Please look at page 8, Mr. Dixey: —

By the Special Master:

Q. What is the distinction, right here, between property book and land book?

A. The property books contain personal property.

Q. Are there two sets of books, one containing real estate and the other personal property? 549

A. Yes, sir.

Q. One denominated land book and the other property book?

A. Yes, sir.

Q. As distinguishing personal property from real estate?

A. Yes, sir.

Mr. Anderson: And there was an annual assessment of personal property?

The Special Master: An annual valuation of personal property, but only a valuation by decades of real estate.

Mr. Anderson: The assessments of real estate was not at regular intervals. The last assessment of real estate was in 1856, and that assessment continued until 1870.

Mr. McClintic: To state the facts further, there was an annual land book made for each year, in which the assessors of each county added to for buildings erected and took off for buildings destroyed, or changes made by a county court, or anything like that? So that there was a land book each year.

Mr. Anderson: There was a slight change in the assessment.

The Special Master: Do I understand that except as there may have been changes in the character of the real estate, the land books continued from one assessment to another?

A. Yes, sir.

The Special Master: If there was a physical change as to 550 the construction of a building, that was allowed for in making the assessment, but otherwise the assessors took the assessed value for the preceding year, and continued until another general valuation was made. Is that right?

Mr. Anderson: Yes, sir.

Mr. McClintic: Yes, sir; that is right.

The Special Master: But the personal property was assessed and valued every year?

Mr. Anderson: Every year.

Mr. Conrad: I have sent for a land book and a personal property book.

The Special Master: Yes; the practice is a little bit new to me, and I simply wanted to intelligently understand what the conditions were.

By Mr. McClintic:

Q. Please state from what this assessment on page 8 in West Virginia was obtained?

A. This is an assessment of personal property in West Virginia and was obtained from the sources indicated on the schedule at the heading of each class of items. I was about to say that the original entries in the property books were not available in so many cases as they were in what afterwards became the Virginia counties.

By the Special Master:

Q. In West Virginia, for instance, you have only six counties for property books of 1863?

A. Yes; those were on file here.

Q. Other than those, there were none on file?

A. No, sir.

Q. Was any effort made to get at the property books in the towns themselves? 551

A. I will say in regard to that, sir, that I think those things are all filed here. We found between 1830 and 1840, roughly, there were large cases in the basement, which we had open. They were all filled with these property books, and we went through those books individually endeavoring to get the nearest assessment made to 1863.

Q. As I understand, there were three duplicates, or there should have been, of both land and property books, one of which according to the law was filed here in the Capitol, one of which I suppose was kept by the assessors, or was supposed to be—

Mr. Conrad: Yes, sir.

The Special Master: Supposed to be kept by the assessors as a permanent public record.

Mr. Conrad: Not by the assessors. It was filed in the county courts' clerks office and in the hustings court, the corporation courts of the town. There were three copies always made.

The Special Master: One copy went where?

Mr. Conrad: One copy came to Richmond, one copy was kept in the clerk's office, and the other copy—

Mr. McClintic: Went to the sheriff for the purpose of making up the tax figures.

Mr. Anderson: It went to the treasurer, who was at that time the sheriff.

The Special Master: The treasurer of what; the town or county?

Mr. McClintic: At that time, the sheriff of the county—

Since the War they have made a new title in this State, 552
but at that time the sheriff was a police officer and a fiscal officer.

The Special Master: My inquiry is whether in regard to the land books and property books any effort has been made to get at those books in those other two places of deposit, outside of the capitol here?

A. None on our part.

Mr. Conrad: They were very much deranged during the War in those regions that were open to the Armies.

The Special Master: That is very true, but has any effort been made on the part of either party to get at the other two of the triplicate set?

Mr. McClintic: If your Honor please, I looked at two or three counties in our State, and could not find them. Beyond that we did not make any further effort, so far as I know.

The Witness: I didn't know three copies were filed.

Mr. Anderson: They must have been sent to Wheeling during that time. There were thirty or forty counties.

The Special Master: The only question I had in mind was, first, whether any effort had been made to get at the other two of this triplicate set.

Mr. McClintic: I found, on examination, that the personal property books were not kept and they are not to-day kept more than three or four years back. Generally at the end of that period they have been destroyed. All the personal property books
that went to the State of Virginia for that year were destroy- 553
ed years and years ago. Your Honor possibly knows that we have had a removal of our capital three times, and they did not keep those things. They simply dumped them away, as they did a whole lot of other books. So far as the counties are concerned, it is not customary for the counties to keep personal property books for very many years. I found that up to the seventies the personal property books had been destroyed. They got to be very voluminous, and as room was scarce, they threw them away. The land books as a rule are kept.

The Special Master: Has any effort been made to get at the original land books in these other places?

Mr. McClintic: The land books were based on the assessment of 1856, and it was not worth while to look for them, because we had the original appraisements, and the changes were infinitesimal from that time to 1863.

The Special Master: If it is agreed by both sides that the assessment that appears here for 1860 to 1861 as to the land can be adopted as the assessed value of land for 1853, that eliminates that element.

Mr. McClintic: There are some differences between Virginia's

account and ours. I think they can be easily reconciled. I believe they are purely clerical.

The Special Master: I may say here that when it comes to questions of detail in connection with these two accounts, which ought to be reconcilable by reference back to the original sources of information, I may ask the accountants on both sides to get together for the purpose of ascertaining what the facts are in those cases. I cannot undertake to investigate those questions. The ac- 554
countants must do that for me; and that will apply to all the items involved in this account. Wherever there is any probability of ascertaining identity of items and identity of amount, where there is a disagreement in these accounts, unless there is some other arrangement made, I shall have to request the accountants to get together and see what they can find. If when they get together and they get the results, there are things they cannot agree on, of course I will determine those; but so far as they can reach common results from the original sources of information, I should like them to do it. That will winnow out a lot of those details.

Mr. Conrad: I will hand your Honor at this time an official publication which gives the form in each county and town of the State.

The Special Master: Let me ask this question right here, because while we are discussing this, if we can make progress, we had better do it. Is it agreed by counsel on both sides that the assessed value of the real estate, as it may appear, either by the land records of 1861 or 1860 or 1863, can be treated as the assessed value on June 20, 1863. That is, are you near enough together?

Mr. Anderson: We are willing that the nearest authentic assessment that can be found shall be taken. We have endeavored to do that.

The Special Master: Is it agreed on both sides?

Mr. Conrad: I think we are shut up to it on both sides. 555
The last assessment of land made before the War both for Virginia and West Virginia was in 1856. That ran until 1866, unless West Virginia had a reassessment of land and I do not think she did.

The Special Master: She could not have had any reassessment before 1863.

Mr. Conrad: We are bound by that.

The Special Master: I know, but I do not want to bother the court with all these names, provided I can have it appear in the record that the parties on either side agree. Of course all these reasons would undoubtedly satisfy the court it is all right. What I want now, if I can safely do it, is to put into the record the statement agreed to by counsel on both sides, that the valuations that

appear here for any other year than 1863 will be accepted by both sides as the valuation under this paragraph for June 20, 1863, except with this suggestion. If there are any items as to which there is a disagreement in the reports of the two accountants, the understanding is that the accountants are to get together. Is that agreed upon?

Mr. Harrison: They are to reconcile them if they can.

The Special Master: Yes; they are to reconcile them if they can. If not, I will get the result, and I will determine then in those particular instances what the fact is.

Mr. McClintic: If your Honor please, there is only one difficulty in that and I do not know whether we can arrange it or not. The West Virginia counties, as shown by the exhibit originally filed here by the accountant for Virginia, had 45,000 square miles. That same exhibit, taken from the Auditor's report of 1861, showed that there were counties in West Virginia, as we can prove by the United States Geological Bureau, which only have 480 miles in 556
them, and in that exhibit they had them as 1,500 square miles. The reason for that was that the Auditor's report says that in many instances they were taken by adding the acreage of the lands assessed in each county together, and that made so many acres, and that made so many square miles. The facts are that West Virginia and Virginia at that time assessed titles instead of land, and there are in a great many cases simply duplications. In other words, there would be a half a dozen people claiming a hundred thousand acres of land. Each one of that half dozen had on the books his hundred thousand acres of land, in order to keep his title. That makes a very grave duplication in West Virginia; but on the face of the books the assessed valuation appears as so much.

The Special Master: Well, how can I do anything else except report the assessed valuation? Of course I appreciate the force of those considerations, but I presume they went all over the State, did they not?

Mr. McClintic: That applies to the wild lands, so-called, and the doubtful titles. Virginia has two systems of land titles, one west of the Alleghenies and the other east of the Alleghenies. We belonged west of the Alleghenies. They had what was known as an inclusive survey west of the Alleghenies. In other words, a man could go out onto Barren Creek and survey a hundred thousand acres and say "I exclude all previous entries, surveys and grants." 557

Mr. Anderson: We had that on the east side, too.

Mr. McClintic: Those things were duplicated and duplicated.

The Special Master: Let us see where we would land on that. There is to be presented to me what will be and is by these reports

the assessed valuation. Now, is the assessed valuation, so far as it relates to the territory of West Virginia, to be attacked upon the ground that this practice was adopted, and that it resulted in the assessment? If you are going to be bound by the assessment, that is all there is of it, if I am to report the assessment as it stands. If you desire to open up that question, then I will hear you upon that.

Mr. Anderson: If your Honor please, the difference between those two assessments is very slight.

The Special Master: I do not want counsel on either side to agree to any fact that is going to embarrass them in any way, or to deprive them of any right.

Mr. Anderson: The amount is very small. The difference in the result as ascertained by the accountants for Virginia and West Virginia is only .088 of one per cent. Therefore it is *de minimis*.

The Special Master: It is important for me, and for you gentlemen later on.

Mr. Anderson: We are perfectly willing to take that statement.

The Special Master: You do not want negligible elements of controversy when you get this up in the Supreme Court, 558 and I do not want to bother the Supreme Court with unnecessarily small details.

Mr. Anderson: As to what my friend Mr. McClintic said just now with reference to the manner in which this excessive or fictitious area was arrived at, I have no doubt he is correct. The same thing occurred in Virginia. Both in West Virginia, west of the Alleghenies and in Virginia, failure to put their claims on the land books resulted in forfeiture of title to the land, according to the law of the State; and in order to save their title to land, they had titles that were worth little or nothing put upon the land books. Sometimes there would be five or six claims to the same land, and they were assessed at nominal amounts, frequently insignificant amounts, sometimes a cent an acre or less.

The Special Master: I have got to do one of two things. I must take the public record of this assessment, or I must allow the public record to be impeached. I do not know what you may have, but it is almost incredible to my mind that you could have living evidence by which you could establish the instances in which the assessors had assessed land under these circumstances in particular cases. Of course you may have it.

Mr. McClintic: We could prove that without difficulty in numbers of instances. Whether it is a provable matter or not is another thing.

The Special Master: That would be another question. The assessed value, of course, is what I must report under this pargaraph.

The whole point is, are you all willing to agree that the assessed value as it appears here in these reports for years other than 1863 may be accepted by me and reported as the assessed 559
value of land on June 20, 1863.

Mr. Anderson: We are willing that that should be done, sir.

Mr. McClintic: We will confer and let your Honor know this afternoon.

The Special Master: I merely make the suggestion. None of you need feel bound to make any of these agreements which I suggest. It is only for the purpose of saving myself work, and saving the court work later.

By Mr. McClintic:

Q. Are the totals of the personal property assessments as set out on the bottom of page 7 correct?

A. You mean in this summary? 560

Q. Yes.

A. The total assessment?

Q. Yes.

A. They are correct according to the sources of information from which we took them, as shown by the schedule.

The Special Master: I would like to have that same suggestion with reference to agreement apply to the personal property as well as to the land. Of course you are not obliged to agree to it, but I merely suggest it. Of course I appreciate the fact that the personal property raises quite different considerations. But we have got to do one of two things. Of course in the absence of getting the assessment for the year 1863, we would have to approximate it in some way, by some competent testimony, and if the only competent testimony you have was the assessment for 1860, and you have to leave the case there, so that I have got to infer, you might as well agree on it and eliminate that as an element of controversy.

Of course I do not direct the course of the hearing, but when it comes to me, if there is nothing before me except the assessment of 1860 to show the value of the personal property in 1863, I should have to come pretty near finding that that is the value in 1863. Of course you have the property book, if you want to supplement it by any additional testimony. We are not discussing actual value; this is assessed value, and I cannot report actual values. 561

Mr. Conrad: The only thing we can do is to lay before you the official reports.

The Special Master: I don't know—on the basis of a fair estimate of valuation of property.

Mr. Conrad: That is another thing. All we can do upon this assessed valuation is to furnish you with the official publications—

and please note that they are as well the official publications of the people of West Virginia as they are of the people of Virginia at the time they were made in 1863. Now, if an assessment of land appears we know it existed in 1856 and continued.

The Special Master: I do not know that I am confined to the assessed valuation of the personal property.

(Reading):

"5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia."

Of course if all you give me is the assessed valuation of 1860, and stop there, and that is all the evidence I have, I may have to take it.

Mr. Spooner: We move to amend that—

The Special Master: I only suggest that. You can go on with the examination. As to whether you both think it prudent, in the interest of progress, and certainty in the result, to agree upon this question of the valuation as to land and personal property, that is something you will have to decide for yourselves. I simply make the suggestion. You may proceed.

Mr. Spooner: We moved to amend that by making it read "assessed valuation." In the Supreme Court's report in connection with these proceedings that word "assessed" is put in.

Mr. Anderson: If your Honor please, that is only the sec- 562
ond paragraph that the word "assessed" occurs.

The Special Master: In the second paragraph the word "assessed" does not appear in the decree as I have it. What I have here is a certified copy of the order on which I am acting, signed by the clerk of the court.

Mr. Spooner: That was amended.

The Special Master: Let us find out where we are. His certificate is dated June 5, 1908, under the seal of the court.

Mr. Spooner: I am not making any mistake about this.

The Special Master: Probably not, but there is one thing certain; if this authority is not correct the proper authority will have to make it correct.

Mr. Spooner: It has been made correct.

The Special Master: But they must make it correct to me. I had in mind all the while that it read "assessed" but when I come to look at this certified copy of the decree I see that the word "assessed" is not there. I will have to communicate with the clerk of the court. I will have it sent back and amended . Of course, this is my authority, this copy I have.

Mr. Anderson: Under the fifth paragraph of the decree, 563
your Honor shall estimate the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia—the fair estimated valuation. There is no suggestion that the assessed value shall be taken as a criterion in that paragraph.

But if your Honor please, when we come to endeavor to ascertain fairly on each side, what was the fair valuation of property on the 20th of June, 1863, it was found to be an absolutely unsolvable problem, and the nearest approach we could get to a value was to take the assessed valuation. Your Honor will understand very well that very few men are old enough to have been in active business then. So it would take the testimony of thousands of men to prove what the assessed value of property in those two States was at that time.

The Special Master: I appreciate that fully.

Mr. Anderson: So it was very difficult. But in taking the assessed valuation we found that here was this difference between the assessed valuation in loyal West Virginia and in the Confederate Virginia—or in Federal West Virginia and Confederate Virginia, I would rather say; because both were right according to the principles which they followed and which it seemed to them to be constitutional.

The Special Master: I accept the change, although I noticed the inadvertence when you made it.

Mr. Anderson: I will put quotation marks around the word "loyal" in the first instance. The assessment there was in reference to lawful money of the United States. It was the money in which the taxes paid to the Wheeling Government were paid in 1863 and 1864; while in Virginia it was transparently 564
evident that the assessments placed by the sworn officers of the Government here had reference to some other standard of value than gold or silver.

Mr. McClintic: Gold was not a standard of value in West Virginia. It was not known then.

Mr. Hogg: It was a curiosity.

Mr. Anderson: So were greenbacks here a curiosity, and illegal as a circulating medium. Comparing the two assessments, you will see that horses were assessed for three or four times as much in 1863 as they were in 1860, although horses in 1860 were worth less in lawful money. So it was evident that the assessments here were made with reference to Confederate money as a standard. In order to ascertain the fair valuation it was necessary to apply the scale adopted by the courts, and that is what we did in reaching our conclusions.

The Special Master: That is another question. The only practical question here is whether between yourselves you will agree, first, upon taking the assessed valuation of the land for the valuation and for what will be the fair estimated valuation under paragraph 5, and then, whether at the same time you will agree that the assessments of personal property you put in shall be treated by me as of 1863; and so far as they go, unless you see fit to supplement them by other evidence to be taken by me as to the valuation of the personal property. You can make that agreement if you like, and reserve the right of Virginia to assert the proposition for which they contend, that for obvious reasons the valuation was excessive and ought to be reduced. That is independent of the ques- 565
tion what the figures themselves show. Of course when I come to report to the court, if I report a valuation for 1861, I have to give some reason why I reach a conclusion in 1863; and if you both stop on 1861 and do not undertake to go further, I might as well have it as a matter of agreement in the record. I only make these suggestions and I want counsel, if they think they can do so with safety and propriety to join me in having an agreement that will eliminate this element of controversy.

Mr. Spooner: We understand your Honor's suggestion and we will consider it with an earnest desire to come to an adjustment about it, and we will not take a great deal of time in considering it either. One of these statements of personal property, as I recollect, embraces 30 odd counties, the assessment of 1860 or 1861.

Mr. McClintic: 1861 and 1862.

Mr. Spooner: 1861 and 1862. Then the other counties of Virginia are reported from the assessment roll of 1863. That is upon the theory that they have been unable to find a complete record for 1863. We shall ask to put in a statement of assessment of 1861 and also a statement of the assessed value in 1863.

The Special Master: Well, that question of fixing a valuation of 1861 would be a question addressed to the discretion of the Master.

Mr. Spooner: Yes; that is true.

The Special Master: That is something I will hear you upon when you reach it. That will not present any difficulty so far as the land is concerned, because the statement made by both 566
sides, as I understand it, is that the valuation of the land in 1861 was practically the same as in 1863—substantially the same, with some few changes.

Mr. McClintic: What did this assessment of personal property, in a general way, include?

Mr. Anderson: What page are you on?

Mr. McClintic: Page 6.

The Special Master: You mean assessments in both places, Virginia and West Virginia?

Mr. McClintic: Yes; the general subject matters assessed in each State.

The Witness: Well, as far as I itemized they were slaves, horses, mules, asses, jennies, pleasure carriages, cattle, sheep, hogs, watches, clocks, pianos and harps.

By Mr. McClintic:

Q. Is that what the assessment rolls show as being the subject matter of assessment?

A. The assessment rolls show those in detail.

Q. And other details?

A. And other details in addition, but not separate.

Q. Those classes were shown on each assessment roll, and they are assessed separately under those heads?

A. Yes, sir.

Q. That is true of each State?

A. Yes, sir.

The Special Master: I see that they do not assess household furniture in those States. You may proceed.

Mr. Conrad: I just asked him if that is not personal property you are examining about.

The Special Master: Is that one of the original valuation books (indicating book)?

(The Special Master and counsel examined some books).

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[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy.*]

By Mr. Harrison:

Q. How did you ascertain the fair proportion of the ordi- 654
nary expenses to be borne by West Virginia, on the basis of the fair estimated value of property, real and personal, by counties? Is that shown by your Exhibit E-1?

A. We substituted the assessed valuation, for we certainly were incompetent to make a fair estimated valuation, and we used the same basis that Virginia used?

Q. You did?

A. Well, practically so.

Q. Did you make a comparison between the assessed values of personal property in Virginia in 1861 and 1862 and 1863?

A. In 1861, 1862 and 1863?

Q. Yes.

A. It was made. I did not make it personally, but I instructed it to be made, I think I have seen the result. I am not quite sure whether they were made or not. My impression is they were.

Q. You are not able to testify about them yourself?

A. I am not sure whether I saw them or not. There were some papers handed to me since this hearing commenced, and I am not sure what they were. I instructed them to be made, and I assume they have been made, but I did not give them any atten- 655
tion.

The Special Master: You are on Defendant's Exhibit E-1 now, are you, Mr. Harrison?

Mr. Harrison: E-1; yes, sir.

The Special Master: Paragraph 5.

Mr. Harrison: On the basis of the fair estimated value of the property.

By Mr. Harrison:

Q. You included in the assessed valuation of personal property slaves?

A. Yes, sir.

Q. And you made no deduction on account of the depreciation in currency?

A. No, sir.

Q. Those two considerations would probably cover substantially the difference between your result and the result shown on Mr. Potter's statement, would they not?

A. I assume that they would. On personal property we did not get all of our figures from the same sources. We discovered a lot of personal property books and took them over there. I think Mr. Potter had not seen them. The books were not open. We found them down in the basement of the Capitol and had them opened and went through those.

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[*Vol. 7. July 1, 1909. General Discussion.*]

[The Special Master]: We come now to Paragraph 5. Have you a substitute exhibit there for plaintiff's original Exhibit E-1?

Mr. Harrison: That relates to the fair estimated value of the property, real and personal, does it not?

The Special Master (reading from decree): "And also on 842

the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia."

Have you reached any agreement on that?

Mr. Dixey: We cannot determine that until the preceding one is determined, because it involves the ordinary expenses the same as the preceding one.

Mr. Harrison: It does not involve the method by which you reached the fair estimated value.

The Special Master: Have you or have you not reached an agreement on that paragraph?

Mr. Anderson: No, sir. There are a great many points of disagreement there.

The Special Master: Are those matters that the experts have gone over, or are they matters which they can go over with any hope or expectation of reaching a reconcilement?

Mr. Anderson: I think they are almost entirely as to classification and as to the construction of these decrees.

Mr. Harrison: The fair estimated value is, of course, a question of facts.

The Special Master: That involves a question of fact as to whether you agree on it.

Mr. McClintic: We will not agree on that—the fair estimated value.

The Special Master: Do I understand, then, that there is not any prospect of reaching an agreement on what is the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia? 843

Mr. Carlisle: I believe we agree on the value of the real property.

Mr. McClintic: The assessed value of the real property.

Mr. Carlisle: Yes.

The Special Master: I am going to report the fair estimated valuation. Now, then, if counsel for Virginia and West Virginia agree that the assessed valuation is the nearest that you can both approximate to the fair estimated valuation, I will report that as the fact. If you do not agree on that, I will hear either of you on any phase of that.

Mr. Harrison: It is upon that point that we want to introduce some testimony.

The Special Master: The first question is, do you agree on the assessed valuation?

Mr. Anderson: We do not think that is a fair criterion.

The Special Master: I do not ask you to bind yourselves as to what is a fair criterion, but the first question is this. I suppose you both rely in some stage of the contention that either of you

may have on this proposition, upon the element of assessed value?

Mr. Anderson: Yes, sir.

The Special Master: Now, what weight or force may be given is a matter to be determined later on by me, after hearing both parties. Now what I want to know is whether, as to the figures the assessed valuation show, whether you agree on them.

Mr. Carlisle: We do not agree as to the assessed valuation of the personal property.

The Special Master: Let us confine it to the real estate.

Mr. McClintic: We have agreed on the real estate. 844

The Special Master: Do I understand, Brother Attorney General, that you agree on the assessed valuation of the real estate?

Mr. Anderson: Yes, sir.

The Special Master: I do not understand that by making that valuation that that is the valuation I am to take. If that is the case, that eliminates that from that sum—what is the amount?

Mr. McClintic: It is set out in Section 2.

Mr. Anderson: $82,000,000 for West Virginia, and I think $290,000,000 for Virginia, and something.

The Special Master: Under Paragraph 5 of the decree we are to determine "and also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia." Now, give me, if you can put your hand on it in a minute, what the assessed valuation is.

Mr. McClintic: It is stated in B-1.

Mr. Harrison: In Virginia the assessed valuation was $296,085,460.31.

Mr. Carlisle: That is real estate only.

Mr. Harrison: Yes.

The Special Master: And what are the figures as to West Virginia?

Mr. Harrison: West Virginia, $82,449,252.04.

The Special Master: Yes; I had not read that. We need not spend any more time on that. That is already agreed to.

Mr. Harrison: We agree as to the amounts of the assessed valuation of the real estate.

The Special Master: The agreement does not bind you any 845
further than that. If I find in the end that the assessed valuation is the fair valuation, I shall find so; if I find that the assessed valuation is not the fair valuation, then I shall so find. If I think it is a factor that should be taken into account, I will take it into account, and not otherwise. Now, as to the personal valuation.

Mr. Harrison: There is a wide disagreement.

The Special Master: There is a wide disagreement as to the valuation of personal property.

Mr. Carlisle: There is a wide disagreement; yes, sir.

The Special Master: There may be a wide disagreement as to the fair valuation of personal property, but is there a wide disagreement as to the assessed valuation?

Mr. Carlisle: Yes, sir.

The Special Master: Do you say so also, Brother Anderson? Brother Carlisle says that the assessed valuation of the personal property shows a wide disagreement as to the figures between Virginia and West Virginia. Do you understand it?

Mr. Anderson: It is almost impossible to find out what the assesed valuation in 1863 was; for a large portion of Virginia there were no returns made because there were no assessments made.

The Special Master: My recollection is that the exhibits do show the assessed valuations for certain portions of the State. What I want to inquire about is whether the exhibits already in the case, so far as they do show assessed valuations, are agreed upon as showing what the assessed valuation was. I will simply stop right there. Do you agree on that? 846

Mr. Carlisle: We do not concede—

The Special Master: Let me give you my point. I do not know that I made myself quite plain. Suppose, for instance, for one county the returns in here show an assessed valuation of $100,000 on personal property. Now, what I want to know is do you both agree that the assessed valuation in that county is $100,000? That does not bind you, it does not affect you in any way as to what bearing it may have upon the ultimate result. Do you agree upon the figures?

Mr. McClintic: No; there is a wide disagreement all through that. There is no possibility, I think, of getting together, unless we change ideas.

The Special Master: Let me make this suggestion. Of course you are more competent to express an opinion than I am in reference to this, you being more familiar with all the facts; but it would seem to me that there ought to be a public record somewhere for the year 1863 that would give an assessed valuation and at the same time also, unless there is some confusion in connection with the inherent conditions existing at that time, there ought to be only one record on that proposition, and if so, that record ought to show one thing. Of course I don't know how this may be; I am simply giving you my impression of what I would suppose you might find. If there is a published report showing the valuation of personal property in a part of these counties for 1863, and there is only one published report, of course it will only show one thing. Do you get my point?

Mr. McClintic: Yes, sir.

The Special Master: You do not concede that that is the valuation by any means. It is open to any criticism that you 847
have to make.

Mr. Carlisle: The question is whether they have any correct records of that kind at all.

Mr. McClintic: We do not concede that they took them off the right books, either. In other words, we disagree as to books.

The Special Master: In other words, they claim they have made an effort to get at the original sources and you claim you have made an effort to get at the original sources, and you do not get the same results?

Mr. Carlisle: Yes. We say ours are more correct than theirs.

The Special Master: Surely; you think your results are more correct than theirs. Now, is there any probability of the experts being able to get together and agree upon what that assessed valuation is? I suppose we would all concede, at least you would concede it was admissible upon that question—what force and effect it might have would be a matter for discussion.

Mr. Anderson: As to the land, that is possible, but as to personal property it is impossible, because in a great number of counties there was no assessment at all.

The Special Master: But you do not quite get the significance of my suggestion. As to a county where there is no assessed valuation, I do not suppose either side has given any figures as to assessed valuation.

Mr. Carlisle: We have gone back to the nearest year.

The Special Master: That is another proposition. I am inquiring about 1863. My inquiries have all been directed to 848
the year 1863. Now, what I want to know is whether the experts agree upon what the official records show in any or all of these counties, or all or none of these counties, for a valuation of personal property in 1863. That is the first question. Do they agree on the amount? And if they have not yet agreed, can they get together and agree on the amount? Or are there two sets of public records for some of these counties? If there are not two sets of public records, there is no reason why the two experts should not agree, where they go to the same record. Now, where there are no assessed valuations, of course neither side will be able to give any assessed valuation. What do you say about that proposition that the experts may be able to agree as to the assessed valuations where there are public records of the assessed valuations? What do you think about that, Brother Anderson?

Mr. Anderson: I may anticipate, probably, the putting in of our case. The suggestion of your Honor has been carefully considered

by counsel on both sides and by the experts; but we found it was absolutely impossible to ascertain what the assessed valuation of the personal property was in a number of counties of Virginia.

The Special Master: Why?

Mr. Anderson: Because there was no assessment.

The Special Master: This question that I have just put does not include that proposition at all. I am afraid I did not make myself clear—

Mr. Anderson: And this fact was developed, too: That the assessments were made in different counties with reference to different standards and measures of value; that in western Virginia they had reference to United States currency, while in what now constitutes Virginia the valuations were made with reference to Confederate money. 849

The Special Master: That would be a question directed to the fair valuation rather than the assessed valuation. 850

Mr. Anderson: What is the fair estimated value? If your Honor please, to fairly meet that, to fairly respond to that inquiry directed by the Supreme Court, Virginia has taken the evidence of a number of living witnesses and has also collated and is prepared to file the evidence of concrete facts shown by the public records of the State, which demonstrate, in our judgment, what was the depreciation of property in June, 1863, approximately, as contrasted with its value in 1861. We have introduced the evidence of a number of existing, intelligent witnesses, business men, men of wide experience, who testify as to those facts as to the State at large, and as to particular instances; and we have introduced the testimony of the records as to sale after sale of property made at that time, and as to the partition of property and the value put upon it by experienced business men, showing the enormous depreciation of real estate at that time and the enormous depreciation of personal property, and showing that as a minimum the loss was not less than fifty per cent., while in a large part of the State the personal property loss was ninety per cent., it was found that nine-tenths had been destroyed; in other sections three-fourths, and so on. But we have taken one-half, if your Honor please, and we have divided 1861, the value for those years by two, and we think that is a very liberal estimate as to West Virginia. That is as near as we can get to a fair estimate of the value of the property.

The Special Master: Now, let us get down to the question pending before me. If I understand you, you yourself in the last analysis predicate some of your figures on the assessed valuation of personal property. 851

Mr. Anderson: The assessed valuation before the war.

The Special Master: It does not make any difference when it was.

You cannot do that unless it is a legal element in reaching the conclusion. Otherwise you would have to exclude it. Now, if it is a legal element in 1861, it is a legal element in 1863?

Mr. Conrad: Oh, no—

The Special Master: One moment. I do not appreciate the distinction between one year and another year. I do not say it concludes. I cannot quite see why an assessment in one year is a valid element in reaching a conclusion and an assessment in another year is not a valid element in reaching a conclusion. The force or weight it may have is another thing. If counsel will notice the distinction I make there they will see the point. The one thing I am interested in here is to have such evidence put in as has a legitimate bearing on establishing this issue, and I could not let Virginia set up one contention predicated upon the assessed valuation of personal property at one time and consider that and then exclude all consideration of the assessed valuation of property at another period. The only point is this: Is assessed valuation at any time an element entitled to be considered? The weight to be given to it, of course, is a matter to be determined later. Do I make myself clear?

Mr. Anderson: Yes, sir. 852

The Special Master: Now, what I want to know is whether the assessed valuations—I will go back to those other years after I get through with 1863. I am talking about 1863, and I am more than glad to have counsel make their suggestions as I go along. Now, the question we are on right now is whether or not the experts and the parties agreed upon what the assessed valuation of the personal property was, so far as you have been able to get it, in 1863. That does not bind either of you as to the effect to be given to that valuation. I simply want to know whether you agree upon the figures, and I will hear you later as to whether or not it is entitled to some weight or great weight.

Mr. Conrad: Speaking for the creditors, as far as any official assessment or appraisement of personal property is concerned, that can be produced by West Virginia, I would be prepared to accept it.

Mr. Carlisle: You have an assessed value on personal property in 1863, assessed by old Virginia and divided by four.

Mr. Conrad: That is very easily made. Will your Honor pardon me a moment?

The Special Master: Certainly.

Mr. Conrad: When you employed a while ago as the rule of reasoning the instance, in reference to Virginia, that a certain assessment of 1861 or 1860 or 1859 might be assumed as a reasonable basis to reason from, that therefore the sum given would be true in 1863, I venture, with great deference, to suggest to your Honor that there is a serious fallacy in that reasoning. 853

The Special Master: If I conveyed that reasoning to you, Brother Conrad, it was not intentional. My suggestion on that only went this distance. Perhaps I did not make myself clear. It was bearing upon the question as to whether the assessment of the personal property was an element to be considered, any assessment made at any time being open to any explanation that may be made.

Mr. Conrad: I think that will be conceded.

The Special Master: The only question is whether the assessment, whenever it was made, so far as it is entitled to weight, is a factor to be considered.

Mr. Conrad: I do not think there is any question about that.

Mr. Littlefield: That is all I meant to convey. I did not intend by any means to intimate that an assessment made in 1863 was entitled to the same weight and had the same probative force as the assessment made in 1861. I will hear you upon that question, when we come to it. Do I make myself clear?

Mr. Conrad: Yes, sir.

Mr. Carlisle: We all agree to that.

The Special Master: Now, we will start where I began. Do you both agree upon the assessment of personal property so far as it is taken from the official records for the year 1863, as to the amount?

Mr. Carlisle: We would agree, I have no doubt—

Mr. McClintic: I beg your pardon—

Mr. Carlisle: One moment. We could agree as to the act- 854
ual assessment of personal property in 1863. But they do not put it into their report, they do not put it in their report or account, except where they divided it by four, and we cannot take that division.

The Special Master: I do not ask you to. You agree, in the first place, in the figures?

Mr. Anderson: We have filed an exhibit giving the assessment of 1863.

The Special Master: Do you both agree—

Mr. McClintic: If they have filed an assessment of counties I have never seen it. They have filed a number five, which gives the total, but if they have filed it by counties I have never seen it. Now, we did file a statement by counties, of Virginia, I suppose about 75 per cent. of the counties, from the property books of 1863, which is our Exhibit E-1.

Mr. Conrad: When you refer to Virginia, what do you mean?

Mr. McClintic: I mean the present State of Virginia.

Mr. Conrad: How may counties?

Mr. McClintic: I would suppose seventy-five per cent. of the counties. I did not calculate them exactly. They show on this Exhibit 5, or E-1, filed by us.

Mr. Conrad: From official assessments?

Mr. McClintic: Yes, sir.

The Special Master: Right there, I would like to know what difficulty there is in Mr. Potter, representing Virginia, looking those figures over and either agreeing or disagreeing to them.

Mr. McClintic: I see no objection to that. 855

The Special Master: Then why do you spend time discussing that?

Mr. McClintic: That was a question of fact I wanted to put before your Honor.

The Special Master: Precisely. Without remembering in which schedule it was, I had a recollection that there was segregated a schedule by counties. Now, I would like to inquire from you, General Anderson, whether or not Mr. Potter cannot look over these official records for 1863 and advise the Master and all concerned whether he agrees with the statement of figures given by the expert for West Virginia as the personal valuations for 1863.

Mr. Carlisle: As to those counties?

The Special Master: Certainly.

Mr. Anderson: I think that can be done, but I do not see how that can be informing to the Master in ascertaining the fair estimated value, for the reason that in Virginia the standard was Confederate money and in West Virginia the standard was greenbacks.

The Special Master: There is no use in discussing that question now, because I am not hearing that question now. I will hear you both on that *ad libitum* before we get through with the hearing and all the evidence you have on that, but what I am trying to get at now is whether one piece of evidence which you both undertake to submit, and one relies on for one purpose and the other for another purpose, whether you both agree on that.

Mr. Anderson: That is just a question of time, and it will 856 not take very much time I think.

The Special Master: Then, we will have probably from both experts a joint schedule stating what the official valuation for such of the counties as you have been able to get the valuation of personal property for for 1863. Now, do you both agree—you understand what I am trying to get? You submit, Brother Anderson, some official valuations of 1861, do you not?

Mr. Anderson: Yes, sir.

The Special Master: Now, do you both agree as to the figures submitted by Virginia as the official valuations for those various counties, as to personal property, for the year 1861? Do you both agree about that?

Mr. Conley: No, sir, we do not agree to that because they do not include the whole property, as we contend.

The Special Master: I will say this. Unless it is put down by counties the Master will not consider it. Let us see what this paragraph calls for (reading from the decree): "And also on the basis of the fair estimated valuation of property, real and personal, by counties, of the State of Virginia." Now, I have to say to you that as I shall require both Virginia and West Virginia to submit to me their valuations by counties, I shall not consider a lump valuation; I cannot report it that way; I have got to report it by counties, and you must submit it to me by counties.

Mr. Anderson: We will furnish that in detail. We have it in the aggregate.

The Special Master: Then separate it into counties. I 857
mean report by counties, for I cannot report total valuations.

Mr. Anderson: We take our figures from the Auditor's report.

The Special Master: It is immaterial where you take them from, but you must get your facts in here so as to answer the questions propounded. Now, Virginia must submit—I say must submit; I mean that of course in a tentative way—in order to have considered their contention by the Master they must submit a valuation by counties. I suppose you can do that without trouble, can you not, Mr. Potter?

Mr. Potter: Yes, sir.

The Special Master: And is there any good reason why the official records for 1861 do not show one thing? Do I understand there is any difficulty about the official records of 1861, so far as you find them?

Mr. McClintic: I don't know, your Honor. We simply went into the books where we could find them.

The Special Master: Let me ask Mr. Dixey this question. Is there any difficulty in agreeing that the books show one thing as to the assessed valuation of personal property for 1861?

Mr. Dixey: For all the counties? Yes, sir.

The Special Master: So far as they exist?

Mr. Dixey: Not so far as they exist.

The Special Master: There is no difficulty about that?

Mr. Dixey: No, sir. 858

Mr. Anderson: A few counties would have to be taken for 1860. There is very little difference.

The Special Master: These suggestions apply to 1860 or 1861. Whether 1860 or 1861 is too remote in the consideration that will be open to both of you to discuss. You do not bind yourself to anything; but I am trying to eliminate everything I can that you can agree on. I do not want to have to take all these figures, and

then try to find out what the valuation is by counties. I don't want to have to go through all that myself in order to get at the result. If you can agree upon that, it will save us all a great deal of time.

Mr. Dixey: Do you want all the counties obtainable for 1863, and also all the counties obtainable for 1861, even though they be duplicates?

The Special Master: Duplicates?

Mr. Dixey: I mean even though the counties appear in 1861 and 1863 both; do you want them for both years?

The Special Master: That is a matter upon which you may be guided by the advice of your counsel. What I want is this. If Virginia submits these figures for 1860 and 1861 and 1863, I would like to have the expert for West Virginia examine those figures and compare them and tell me whether he agrees that they are correct statements from the official records. Do I make myself plain?

Mr. Dixey: Yes, sir.

Mr. McClintic: I understand, but I want to say this for the benefit of the other gentlemen. We are supposed to submit here at this hearing the personal assessment of 1860 as taken from the Auditor's reports, and if the gentlemen want to take it 859 and go over it with the books, I would be glad to do that; but at the same time we are going to submit that as testimony for whatever it is worth.

Mr. Conrad: From the report of Auditor Bennett?

Mr. McClintic: Yes, sir.

Mr. Conrad: His published report is here.

Mr. McClintic: I am taking it off. In addition to that, I want to submit a table showing the value of real and personal property by counties in 1860 and published in a book called Miscellaneous statistics, Census Reports, 1860.

The Special Master: That is, a United States Census report?

Mr. McClintic: Yes, sir. I have taken a transcript from it for convenience; and if the gentlemen want to take that and compare it with the books, I would be glad to have them do so:

Mr. Anderson: Will you let us have a copy of that?

The Special Master: Yes; let them have a copy of it. Counsel need not have any apprehension. There is no agreement that you make here that will in the slightest degree at all prejudice your rights as to whether this thing or that thing shall be given this effect or that effect. I am simply trying to get an agreement upon the elements, and what weight I will give these things is something I will hear you on later. But get your facts all in now. That is, I would suggest that that is the best thing to do. And then later, when we come to have the final argument, I will hear you both

upon what is proper and what weight should be given to this consideration or that consideration. But now we will get all the facts we can agree upon, and that will simply eliminate some elements of controversy. 860

Mr. McClintic: I will also at the proper time present a table showing the number of slaves, as taken from the United States Census report; likewise the number under twelve years old and the number over twelve years old; and the total by counties; also the slaves assessed in 1860 in each of the counties, over twelve years old, as shown by the auditor's report.

The Special Master: That is, bearing upon the question of valuation of personal property?

Mr. McClintic: Yes, sir. I will give notice to the other side.

The Special Master: You submit that as notice of something you intend to offer, and it is subject to inspection and criticism by the other side?

Mr. McClintic: Yes, sir.

The Special Master: Now, when can Mr. Potter and Mr. Dixey give us this record by counties of the assessed valuation of the personal property for 1863, 1861 and 1860?

Mr. Anderson: That data has been compiled by both sides.

The Special Master: I mean when can they give us that result, so I can put it in the record that that is what the figures show?

Mr. Carlisle: For the counties which they can have access to.

The Special Master: The agreement covers the counties for which figures can be had. 861

Mr. Anderson: Take the first year, 1860.

The Special Master: The records will all show that.

Mr. McClintic: Did I correctly understand your Honor to say that if you cannot get 1863, you would like to have the nearest year?

The Special Master: No; I am not intimating that I am going to take anything—

Mr. McClintic: I mean are you asking for that?

The Special Master: No. I understand this: That you have in here already, either on the part of Virginia or on the part of West Virginia, the valuation of the personal property for 1863 so far as it goes, and you also have in here the valuation for 1861—

Mr. McClintic: 1862—

The Special Master: Well, that is very good. You may put in—and so far as you put in I should like to have you agree upon what that valuation shows. Now, the weight to be given that is to be determined later, after having heard the argument of both parties. If you want to put in your valuation for 1863, so far as you have got it and agree on it, and if you want to put the figures in for 1862 and 1861 and 1860 the same, that simply covers this. You agree

on the amounts, but you do not agree on the effect of it, and I do not intimate what weight I will give to any of the valuations. Do I make that clear, Brother Anderson?

Mr. Anderson: Yes, sir. 862

The Special Master: Is that satisfactory, Brother Conrad?

Mr. Conrad: Entirely so.

The Special Master: The only purpose now being to get away brushwood, is to get to the agreement on the facts. The effect to be given to it is a matter for later consideration. Can the experts give us that, and, if so, when will they be able to give it to us?

Mr. McClintic: Well, we have it for 1863, already, taken from the books.

The Special Master: Have you got it for all three years, or all four years?

Mr. McClintic: No. We have 1860 only from the Auditor's report; and 1861 and 1862—and only where we could get it for 1863.

The Special Master: This only requires you to agree so far as you can agree. If, in addition to the agreement, you think there is anything in relation to either of those years you want to introduce—

Mr. McClintic: The trouble about it is it involves a great deal of labor, going down to the basement of this building and getting out a lot of boxes filled with books and going all over them.

Mr. Conrad: At the first meeting there was offered on the part of Virginia a report made by Mr. Bennett, the Auditor of Virginia, giving an itemized, detailed statement of each county of the State, of the appraisement of every article of personal property in the commonwealth. That has been in evidence all the time, made county by county, alphabetically arranged, giving the 863 assessment of the personal property up to 1862. Now, when gentlemen say that they have, from the official records of Virginia an assessment of personal property in 1863, I confess that is a matter of astonishment to me.

Mr. Carlisle: We say part of it.

Mr. McClintic. It has been introduced in evidence here, and a copy of it furnished you.

Mr. Conrad: There was hardly, outside of the cities and towns of this commonwealth, a tea cup equipped with a handle in 1863.

Mr. McClintic: Oh, you had a heap more property than you thought you had.

Mr. Conrad: No, sir, we had not, and I know pretty well what I am talking about. We hadn't any farming implements to speak of—

The Special Master: I have just read Mrs. Pryor's book on that period. While I do not want to be understood that I have taken judicial notice, sitting here as Master, of what is stated in that book,

still it is very illuminating. I do not say it is controlling by any means.

Mr. Conrad: It is so conspicuous that the Courts of Virginia would take judicial notice of the fact—I am referring to how little personal property there was here—and the personal property of the State consisted in great part of slaves and bank stock.

Mr. Carlisle: But still, if they did make an assessment—

The Special Master: I can say this. Of course I notice the 864
Major's suggestion about this book. I suppose if the other side offers evidence that they think impeaches it, I shall be obliged to admit, if in my judgment it is competent. When we come to what is evidence, I suppose both sides expect me to rule, or endeavor to rule, in accordance with legal principles bearing upon the question of that ancient debt. I suppose if West Virginia claims that there is an official record upon which this report must have been based, and they say it does not agree with it, I do not see why I would not have to be required to consider it in determining whether or not I thought that, as distinguished from the book, was the authentic valuation. Now, those are all questions that are going to come up later. My question now is, will the experts go back to the original official records for the year 1863, 1861, 1862 and 1860, and so far as they show, in whole or in part, the valuation of the personal property, will they agree on it if they can? Then, when we come to the valuation of 1861, if either side has any contention they want to submit in reference thereto, tending to show that it is not entitled to the weight it would show on its face, I will hear it. And the same with 1860, 1862 and 1863. I do not say, and I do not understand, that the assessed valuation of personal property is the only criterion of its fair value. Of course I could not rule that; not in the presence of lawyers; but I suppose we are all quite familiar with the kind of evidence that it would be necessary to have in order to establish the valuation of property at any period of time. By those rules I should expect counsel to be governed, and of
course I will have to do the best I can in ruling, to follow 865
along on those rules. Now, all we are trying to do is to get at one element, without any reference whatever to the weight it has, subject to all kinds of explanations that either of you can make, to get that one element agreed upon for the year 1860, 1861, 1862 and 1863, so far as you can get the original sources. There ought not to be any trouble about that.

Mr. Anderson: I do not think there ought to be any trouble about that. It will only take a little time.

The Special Master: Does that embarrass you, Brother Anderson?

Mr. Anderson: No, sir.

The Special Master: With the suggestion I have made, does that embarrass you, Brother Conrad?

Mr. Conrad: No, sir.

The Special Master: That is, as far as that goes. Now, are there any other items in relation to paragraph 5, as to which you have any disagreement, or as to which there have been disagreements, as to which you can now agree? If not, we will go to paragraph 6.

Mr. Anderson: I do not think there are, sir. What will be a fair estimated value on each side will rely on different evidence.

The Special Master: Now, of course, whether you will want to put your evidence in until you get the assessed valuation to work from—

Mr. Anderson: I think it will be better to put it all to- 866
gether.

The Special Master: I do not know but what you both might want to use the assessed valuation to start from, and of course if you do, we will have to wait until you get that.

[*Vol. 7. July 1, 1909.*]

[The Special Master]: 876

We next come to Plaintiff's Exhibit, Substitute Exhibit E-1.

Mr. Anderson: That will await the filing of the assessed valuations.

The Special Master: We cannot go on intelligently until 877
you agree as to those results, so far as that is concerned.

[*Vol. 7. July 1, 1909. As to assessed values.*]

Mr. Carlisle: * * * We still have the matter of the assessment—

Mr. Conrad: The assessments of 1863?

Mr. Carlisle: No, sir; the assessment of 1863 so far as there is any assessment in 1863 is already in. Now, what the Master wants is an assessment by counties. 908

Mr. Conrad: We put it in.

Mr. McClintic: I haven't seen it.

Mr. Conrad: We submitted that.

Mr. McClintic: You mean the book you filed?

Mr. Conrad: Yes.

Mr. McClintic: Not for 1860. There were only partial figures for 1861 in that book.

Mr. Conrad: Pardon me. I am perfectly familiar with that book. That is a report made by Mr. Bennett, a reliable West Virginian, who was the Auditor of this State. He made it when

he represented the territory of both the present States, and we put that in evidence formally and distinctively a year ago. There is an assessment by counties of all personal property. The gentlemen say they have not seen it.

Mr. Carlisle: I never saw it, I am sure.

Mr. Conrad: It has been in evidence all the time.

Mr. McClintic: Did you put in that as your claim of the assessment under this exhibit you filed as No. 5? 909

The Special Master: Just one moment. I doubt whether this is making much progress. Let me make this suggestion without discussing the character of this book or what it is evidentiary of, we have two sets of accountants here, and I am rather inclined to think it is the proper thing for each accountant to submit a schedule of his own. I think it is quite fair, Brother Conrad, for them to ask your accountant to submit his schedule. Then he can show the source from which he got it, and then they can get together and agree, perhaps. There may be evidence in this case, and it may be legal evidence; and I do not say you will be required to put in anything additional, but it seems to me it is quite proper for them to ask your expert to take up the evidence submitted by their experts, by counties, and see if they can agree. We cannot print all this book.

Mr. Conrad: It would not be necessary. It is a public official document.

The Special Master: Somebody must pick it out from the book, and it strikes me that your expert is the best man to do it. I do not think they are unreasonable in requesting that they try to get together with their expert, on these counties in these years. I may agree with you that you may have the evidence already in.

Mr. Conrad: All that would be necessary would be one to hold the book and the other hold his statement and go over it.

The Special Master: That is simply giving the result. That does not militate against the fact that the result ought to be reached. You may be right about that. I do not under- 910 take to say about that. Then, Mr. Carlisle's suggestion is that the introduction of evidence on the part of Virginia in connection with what the assessed value of real property was at that time is contingent upon the submitting of these schedules by the accountants, and that then that evidence will come in. I understood that to be Mr. Anderson's position. Am I right.

Mr. Anderson: I would like to say a word on the entire question.

The Special Master. Certainly.

Mr. Anderson: I cherish a most earnest desire to expedite this case, and I see no occasion whatever for any such delay as is now proposed.

Mr. McClintic: We are not proposing any delay.

Mr. Anderson: Excuse me. I have been waiting for an oppor-

tunity to say this, and I will not take very much time to say what I want to say.

The Special Master: You will have unlimited time. I mean, I want you to take all the time you desire.

Mr. Anderson: I see no occasion for this delay at all. This matter of the assessed value in 1863 of the real and personal property can be put before you to-morrow, or certainly by Saturday, official records, as to the items of which there can be no controversy whatever. The statements which Virginia desires to file under section 5 of the decree, which I believe is E-1 of the Exhibits, can all be laid before your Honor either now or on Saturday morning, or to-morrow. So there is no occasion for delay so far as Exhibit E is concerned.

934

[*Vol. 7. July 1, 1909. Relating to Joint Statement of Assessed Values.*]

The Special Master: I think we have gotten pretty nearly through everything we can do except Paragraph 5, and the evidence you may want to submit.

Mr. Conrad: The experts will get together, I understand, under your direction, on the matter of reconcilement of the matters of appraisement.

The Special Master: I do not want you to feel concerned by any suggestion I make, but my suggestion is, would it be practical for you to go right along under this paragraph and then put in your proof under Paragraph 5, and then let the schedules come in later? If you do not feel if would be best to go on now, we can take it up in the morning. Of course if we could do it now in the course of an hour or so—

935

Mr. Anderson: We would not be ready on No. 5.

The Special Master: Is not everything you have got on that in depositions?

Mr. Anderson: No. We want to file something as to the assessed values.

The Special Master: You could not go with that now?

Mr. Anderson: No, sir. It will take a very little time for an accountant—

The Special Master: We could not get through with that this evening?

Mr. Anderson: No. I think probably Schedule E-1 will take an hour.

The Special Master: The question is, will we not save time if we

postpone that until to-morrow? We cannot close it up this afternoon, as far as I can see.

Mr. Moon: Your Honor asked for a joint schedule under Paragraph 1?

The Special Master: That we have already agreed to.

Mr. Moon: They are getting that up. 936

The Special Master: They are to take that and make one schedule and both sign it, so we will not have two duplicates on file. That takes care of that. What do you think, gentlemen, that we would make as much progress as practicable if we were to adjourn now until to-morrow morning?

(Informal discussion followed as to the question of adjustment.)

Mr. Conrad: I understand also that when we adjourn here we adjourn for the final argument of the case.

Mr. Carlisle: If the experts do not get through to-morrow, whenever they do get through, let them send us the result of their work.

The Special Master: You will be ready to-morrow morning at nine o'clock, will you not, gentlemen?

Mr. Dixey. I think so. We may not have that Exhibit A.

The Special Master: All the experts have got to reconcile under Paragraph 5 is the assessed valuation by counties for the years 1863, 1862, 1861, and 1860, so far as they can get them. There is no reason why you will not be ready, is there?

Mr. Dixey: Only the physical reason that these books are incased in packing boxes, and they have to be dug out, and there is a good deal of labor involved, and it will take a good deal of time.

The Special Master: You appreciate this. Here are eight or ten lawyers. Their time is all worth something, and they are anxious to get through with his. We do not want to unduly press you people, but if you can be here to-morrow morning at nine 937 o'clock with a reconcilement of these matters that have been submitted to you, it will clean this case up, and it will be really an extremely great convenience to all concerned. Now, we feel like asking under these circumstances that you shall put in all the time possible between now and then to get the results. You appreciate the situation?

Mr. Anderson: If Mr. Dixey and Mr. Potter cannot agree, I would be very glad if your Honor would indicate to them that they state in writing wherein they do not agree.

The Special Master: Yes; I will do that.

Mr. Carlisle: And if they do not agree, they may agree later.

The Special Master: It is almost sure that they can agree on what the official record shows.

Mr. Carlisle: Suppose they do not agree by to-morrow morning.

The Special Master: They can have one set of men at work on that branch of the case and another set under the other paragraph all at the same time, and it really does seem to me, even though they may have to work pretty late, that they really ought to put in some extra exertion in order to be here and facilitate this whole matter on the part of all concerned, because it will be a great accommodation to all of us.

943

[*Vol. 7. July 2, 1909. Testimony of J. M. McWhorter.*]

Mr. McClintic: I have a witness I would like to put on the stand.

The Special Master: Very well; while we are waiting for Mr. Potter, Mr. McClintic suggests that we hear from his witness.

Whereupon

J. M. McWHORTER

a witness produced by and on behalf of the State of West Virginia, having been first duly sworn, was examined.

By Mr. McClintic:

Q. What is your age?

A. Well, I have lived 81 years; I don't know whether I am that old or not.

Q. What is your occupation?

A. Attorney at law.

Q. What official positions did you hold under the Government of Virginia before the 20th of June, 1863, if any?

A. I was clerk of the County Court and deputy clerk of the 944
Circuit Court of Roane County.

Q. What official positions have you held under the Government of West Virginia?

A. I was first Warden of the Penitentiary for one year—not for a year, either. I was appointed to see whether we could work the convicts to any advantage, and they were scattered through the different jails, and I informed the Governor, after investigating, that we could not work them to any advantage.

Q. What other position did you hold?

A. Then I was Auditor for two terms.

Q. When did you first become Auditor of West Virginia?

A. In 1865.

Q. Were you elected in 1864?

A. Yes, sir.

Q. Were you ever a member of the West Virginia Legislature?

A. I was.

Q. When?

A. In 1863, the first Legislature of the State.

Q. What other positions have you held, besides being Auditor of the State?

A. Judge of the Circuit Court of the Circuit of Greenbrier County, and associate counties with Greenbrier.

Q. How often were you judge of that Circuit Court?

A. Twice.

Q. When did your last term end?

A. December 31, 1904.

Q. When were you first judge of that Circuit?

A. I was appointed Judge there in March, 1870. 945

Q. How long did you serve then?

A. Nearly three years.

Q. You served until you were constituted out of office by a new Constitution?

A. Yes, sir.

Q. Were you over in West Virginia much during the periods of 1861, 1862 and 1863?

A. The War broke out in 1861. I was clerk of the county court of Roane county, and lived there until February, 1864. I then moved to Jackson County. I was over in Jackson, and Kanawha during that time; and some other counties, also, for instance, Mason—

Q. What was the condition of that country as to the contending armies? Was there much raiding and backward and forward movements of each army through that section of West Virginia?

A. Yes, sir. In 1861, when the War broke out, the people divided, those belonging to the Union Forces, those adhering to the Union, forming what they called home guards. On the other side, they had guerilla companies; and between the two it was a terrible state of affairs. I do not want to see it again, and I don't think I ever will.

Q. What was the result of that guerilla warfare upon the people and the property and personal property, especially?

A. No one could feel any safety as to his property. I lost a horse or two myself. Most everybody had to keep a constant watch on his property for fear it would be carried away by one side or the other. 946

Q. What was the condition of property in West Virginia as to depreciation in value on account of these war conditions?

A. As I remember it now, property was very much depreciated in value, because of the apprehension all the time that they would lose it. They found a ready market for the cattle, beef cattle and sheep, mutton; that found a ready market as long as the soldiers were in there. But there was a constant fear and apprehension all the time of the loss of property, and people were ready to dispose of it at a depreciated price.

The Special Master: Am I correct in understanding you to say that

it resulted in an absolute depreciation, or simply that there was this apprehension?

The Witness: On account of the apprehension, there was a depreciation. People were ready to dispose of their property and turn it into money.

By Mr. McClintic:

Q. Was or was there not a large emigration from West Virginia from the period of 1861 to 1863?

A. There was in 1861. As I have stated, the companies were formed on one side and the other. Nearly all that went into the home guard, men of proper age, went into the Federal forces, in the Federal Army; and they moved their families out, so as to have them secure.

Q. Was there not a large emigration from West of the Confederate sympathizers, down into Virginia or other Southern States?

A. Oh, yes; I know a great many who left and came south—
a great many. 947

Q. Was there not also a large emigration of Union sympathizers to Ohio and other nearby Northern States?

A. Yes, sir; a large emigration.

Q. Were there many army movements, either of the Confederates or of the Federals, backwards and forwards in West Virginia during this period, and continuous raids by one side or the other?

A. The Confederates first organized companies there—

The Special Master: I think he has already stated that. I understood him to testify in regard to that.

Mr. McClintic: I am not speaking of the Guerilla companies, but the Confederate Army proper now.

The Special Master: Very well; proceed.

A. The Confederates first organized their forces there; but they did not hold their position very long. They soon had to leave. They left there and there never were any other forces than the guerilla forces on either side, except in—I have forgotten now whether it was 1861 or 1862, but whenever it was, there was one other raid through there, by General Jones. He passed through, and the forces of the regular army, a small army, got out of the way then.

Q. What was in the minds of the people as to confiscation of property at that time; what was discussed?

Mr. Harrison: You are not asking for facts now, but what was in the minds of the people?

Mr. McClintic: Yes; what was in the minds of the people.

A. Well, it was understood there at one time that there was 948
a bill pending before the Confederate Congress to confiscate the property of the Union men of the State, and it alarmed them a good deal.

Q. Was there not also talk and claims made by the Union people that they would confiscate the property of the Confederates?

A. There was a great deal of that done; a great deal of talk that it was a part of warfare to confiscate the opponent's property.

Q. Was there not in effect a good deal of that done? I mean, was there not a good deal of real confiscation?

A. That is what I say; there was a good deal of that done, a good deal of property confiscated.

Mr. Conrad: Confiscated?

Mr. McClintic: Yes; taken in all sorts of ways.

Mr. Conrad: That is not confiscation.

Mr. McClintic: It amounted to the same thing.

Mr. Conrad: Oh, no!

The Special Master: What you are trying to show is that one or the other of the contending forces took personal property and applied it to their own purposes?

Mr. McClintic: Not only personal property, but real property, through alleged forms of law.

The Special Master: If that is true, I suppose it could be shown by legal proceedings.

The Witness: I do not know that any real property was taken.

The Special Master: You would not undertake to establish that, by oral testimony? 949

The Witness: I do not think any real property was taken.

The Special Master: Of course, whatever was done under the forms of law, the records will show. Personal property, of course, could be taken physically without having any written proceedings connected therewith.

By Mr. Carlisle:

Q. When you speak of the conditions there, are you speaking of the single county of Greenbrier, or of that section of the State?

A. I was speaking of the section in which I lived. I am not speaking of Greenbrier.

Q. You are not confining yourself to Greenbrier?

A. I was not in Greenbrier. I was in Roane County and Kanawha and Mason County.

Mr. McClintic: And adjoining territory?

The Witness: Yes.

The Special Master: The whole territory with which you were conversant at that time. That is what he is testifying about?

Mr. McClintic: Yes, sir. That is all.

Cross Examination.

By Mr. Conrad:

Q. Referring to the numerous offices that you have held, were any of them held under the old State of Virginia?

A. Yes, sir; up to the time of the convention at Wheeling, when they declared themselves independent of Virginia.

Q. What office had you held up to that time? 950

A. I had held the office of clerk of the county court.

Q. But your judgeship and your position as Warden of the penitentiary, and so forth, was under the restored government of Virginia?

A. No, sir; it was under the Government of West Virginia.

Q. You lived in Roane County, and then moved to Jackson, an adjoining county?

A. Yes, sir. That was in 1864 that I moved to Jackson County.

Q. When you speak, or have spoken of the condition of affairs in West Virginia, do you undertake to state under oath here anything about the condition of affairs outside of Roane and Jackson and the adjoining counties?

A. No, sir; I do not. I did go, though, sometimes, into Lewis County, and sometimes into Harrison County.

Q. You have been asked about the destruction of property there. Can you say that to your knowledge any property ever was destroyed by any organized force of the Confederate Army?

A. Yes, sir.

Q. What property?

A. Yes.

Q. When and what property?

A. I was just saying that I am not quite sure when it was that Colonel Jones passed through there. I think it may have been in 1861— 951

Q. 1862.

Mr. Carlisle: 1863, was it not?

The Witness: 1863, I believe it was.

By Mr. Conrad:

Q. I was adjutant of one of his regiments.

The Special Master: This was not Judge Jones, of Alabama?

Mr. Conrad: No, this was another Jones: William E. Jones.

The Special Master: There are several Joneses.

By Mr. Conrad:

Q. Just a moment. This is a matter I wish to have stated particularly. I wish you would indicate one piece of property that you know, to your knowledge, was destroyed by any Confederate force?

A. I don't know that I can, any personal property.

Q. What real property was destroyed?

A. None that I know of.

Q. Oh, yes, there was. We burned up hundreds of thousands of barrels of oil.

A. I was not in the oil section. I remember of hearing of that.

Q. I want you to state to the Master whether you know of that command taking any horses or cattle or property of that kind that was not paid for, and paid for in greenbacks, at that?

A. Yes, I did.

Q. What was it?

A. That was old Man Hickle, in Roane County. He came 952
in there, and old man Jenkins offered him greenbacks for what they took from him and he would not take the greenbacks, but wanted Confederate money.

Mr. Conrad: I hope your Honor got that point.

By Mr. Conrad:

Q. I wish you would state again if you know of any property whatever that was taken by General Jones' command?

A. I do not.

Q. Do you know of any other organized Confederate force that ever was in that part of Virginia during the War?

A. I know some forces that claimed to be organized and claimed to be a part of the Confederate Army.

Q. What counties were they in?

A. They were in Calhoun, Roane, Jackson—they were scouting parties, rangers, they called themselves.

Q. Guerillas?

A. Well, they called themselves rangers.

Q. Yes. Let us see a moment. Were not those men composing those commands, citizens of that part of the country?

A. Some of them were and some were not.

Q. Do you know any of them that were not?

A. Most of them were composed of the citizens.

Q. Again, I ask you, to your knowledge was there any organized part of the military force of the Confederate Army in that part of Virginia?

A. Not unless these companies that I have referred to could
be considered a part of the military force of the Confederate 953
Army.

Q. Those guerillas, you mean. They were not. Now, when you talk about property being destroyed and taken, you mean taken by those guerillas?

A. I do, mostly.

Q. They were your own people—

Mr. Carlisle: It wouldn't make any difference who took it. The question is whether it was taken.

Mr. Conrad: I understand that.

The Special Master: I suppose I should have to say that if the statements made by Major Conrad are evidence, he would subject himself to cross examination.

Mr. Conrad: I am perfectly willing to do so.

Mr. Carlisle: It makes no difference whatever, if the property was destroyed, who destroyed it.

The Special Master: The cross examination is proceeding, evidently, from a more or less intimate knowledge of conditions inquired about.

Mr. Conrad: Yes; I ought to know something about them.

The Special Master: Not that the Master indicates that he thinks counsel confiscated any of the property—

Mr. McClintic: I believe the distinguished counsel admits that he burned bridges.

Mr. Conrad: When General Lee entered Pennsylvania he issued an order absolutely prohibiting his men from even taking an apple from the orchards, and there is no evidence that the rule was ever violated. And so, when we went into West Virginia, property 954
was not taken by the soldiers, and if you know of any instance in which Jones' command took property without paying for it, I wish you would state it.

The Special Master: He has stated that already.

The Witness: I said I do not know of his taking any, and I did not hear of his taking any.

Mr. Conrad: Then he says his knowledge of West Virginia is confined to these counties.

The Special Master: Yes; I so understand it.

Mr. Conley's suggestion in regard to the apples was that General Lee probably knew what the effect would be on the men if they eat green apples.

Mr. Conrad: It was a bellicose thing, then, you know.

The Special Master: He was a little afraid it might be disastrous.

By Mr. Anderson:

Q. When were you auditor of West Virginia?

A. My term of office commenced March 4, 1865.

Q. I have here the auditor's report from 1861 to 1870, of West Virginia, a book which has already been offered in evidence.

Mr. McClintic: Understand me; I never introduced the book in evidence. I only introduced one page. You can introduce as much as you want to, however.

Mr. Anderson: It is understood that either party can refer to this.

The Special Master: Certainly; that is right.

By Mr. Anderson:

Q. I notice in the auditor's report for 1865, or coming down to 1865, that the assessed valuation of personal property in Ohio County, which is the county, I believe, in which the City of Wheeling is located, aggregated $817,560 in 1860, and had increased to $2,663,637 in 1865, immediately after the war, which was an increase of over $2,100,000, an increase of over 300 per cent. If there was much destruction of personal property in West Virginia, how do you account for that condition of affairs, that the property increased threefold during that time? 955

A. Well, in Ohio County it was entirely safe. They had never been raided. They had not been threatened with danger there, and the City of Wheeling did prosper beyond any question.

The Special Master: That is, your statement was that that county was not subject to these uncertain conditions?

The Witness: That is it, sir.

Mr. Anderson: Well, take the county of Roane. You were auditor in 1865?

The Witness: Yes, sir.

Mr. Carlisle: But this was before 1865.

Mr. Anderson: No; this is the report of 1865.

Mr. Carlisle: He was elected Auditor in 1865, was he not?

The Special Master: He was elected in 1864 and became Auditor in 1865. That was the statement of the witness.

Mr. Anderson: Yes. This shows that the assessed value of personal property in 1860 in Roane County was $158,731, and in 1861 it is estimated at $130,700, which shows a depreciation of $28,000. So there appears to have been some depreciation. Let us take Ritchie County. The assessments in 1860 were $261,832; and in 1865 the figures are $445,138, or nearly double. 956

The Witness: In Ritchie County?

Mr. Anderson: Yes, sir.

The Witness: Yes, sir.

By Mr. Anderson:

Q. Take Jackson County, which is one of the counties you mentioned that suffered from the guerillas. That is immediately on the Ohio River, is it not?

A. Yes, sir; Jackson County is on the Ohio River.

Q. Your report shows that the personal property in Jackson County for 1860 was assessed at $294,986, and for 1865 you estimated it to be worth $403,314, or an increase of perhaps 60 per cent.

A. Yes, sir. It is along the Ohio River there—

Q. That is one of the counties that you say suffered. Now, take Kanawha County. Kanawha County is one of the counties mentioned. The assessed valuation of personal property in Kanawha County

in 1860 was $720,969, and in 1865 that increased to $803,137, or an increase of about twenty per cent.

A. There seems to have been no loss there, no, sir.

Q. Now, Judge McWhorter, is it not a fact that no Confederate armies occupied any part of West Virginia west of Greenbrier County after 1862?

A. That is a fact, yes.

Q. Is it not true that the only Confederate armies that ever 957
were in West Virginia retired from West Virginia in the fall of 1861? That portion of West Virginia, I mean, not dominated by the Confederacy—in the fall of 1861 or early in 1862?

A. Yes, sir; excepting for these raids that I have referred to.

Q. Jones' raid?

A. Yes, sir.

Q. And Jenkins' raid?

A. Yes, sir.

Q. They were commands that went rapidly into the country and rapidly out of it again?

A. That is so.

Q. They did not occupy the country but a few days, any portion of it, did they?

A. Only a short time; they just went through and out again.

Q. Was not General Lee's Army stationed on Sewell Mountain, a country that was almost a wilderness, not densely populated at all?

A. That was a mountainous region, yes, sir.

Q. And the Federal Army, under General Rosecrans, was near it in that same region, in that mountainous region, was it not?

A. Yes, sir.

Q. And they had to retire from that country because of the bad conditions of the roads, and because it was impossible to supply their armies; is not that so?

A. That was the situation, yes, sir. 958

Q. When was oil first discovered in West Virginia? When was petroleum, I mean, first discovered?

A. I think it was in 1860.

Q. Was not that industry and that resource of West Virginia largely developed during the War, in the early part of the Civil War?

A. Well, in 1861, it was the most active development that we had, I believe.

Q. When was natural gas discovered in West Virginia?

A. There has been the greatest discovery of natural gas in recent years.

Q. Was it not discovered during the Civil War?

A. It has not grown into use then, I am sure.

Q. It had not been developed for economic purposes?

A. No, sir.

Q. But it was discovered?
A. Yes, sir.
Q. And the petroleum interest was largely developed, was it not?
A. Yes, sir.
Q. In considerable sections of the State?
A. Yes, sir.

The Special Master: In 1861 it was the highest state of development, I understand.

Mr. Anderson: In 1861, 1862 and 1863. The development was along the Little Kanawha River and other regions of the State.

Mr. McClintic: There were not any developments of oil except along the Kanawha River.

Mr. Anderson: Are you testifying? 959

Mr. McClintic: You are testifying. You are asserting that the development was along the Little Kanawha River and other regions of the State.

Mr. Anderson: I was asking questions.

Mr. McClintic: If you were asking a question, then it is all right.

The Special Master: If that is material, put the specific question. Is that all, Mr. Anderson?

Mr. Anderson: No, sir.

The Witness: During the war, after 1861, I do not think there was much development of the oil, or much working of the oil there.

By Mr. Anderson:

Q. Was there not a market in West Virginia in 1862 and 1863 for all the products of agriculture, and other products of the people?
A. Yes, sir.
Q. They got good prices?
A. Yes, sir; pretty good prices.
Q. In lawful money of the United States?
A. Yes, sir.
Q. Did not the United States Government, in connection with its military operations, expend very large sums of money in West Virginia?

The Special Master: In the purchase of supplies, you mean?

Mr. Anderson: In the purchase of supplies, yes.

A. They got good prices for all their products.

By Mr. Anderson: 960

Q. Did not Cincinnati furnish a good market for all your products during that time, at high prices?
A. We did not have to go as far as Cincinnati.
Q. You had a home market?

A. While Uncle Sam's Army was there, we furnished to the Army all our products.

Q. And the United States Army did not depredate upon your country, did it?

A. No, sir.

Q. When they were stationed in West Virginia?

A. No, sir; I cannot say that they did. When disturbances arose, they would confiscate the property and take the property out in the region—

Q. But they paid for it, did they not?

A. They would very often do that, but if it was a Confederate they did not always pay for it.

Q. You mean if they got it from Confederate sympathizers they would not pay for it?

A. Yes, sir.

Q. Is it not a fact that the portion of West Virginia you are familiar with, and north of that, the "Pan Handle," Monongahela and Marion and Taylor and Harrison and Ritchie Counties, and all that region there, was really prosperous during the war; did not lands appreciate in value, as well as the products of the State?

The Special Master: How can he tell when he was not up there at all. That must be hearsay. He cannot give testimony as to parts of the State he was not in, or at least we cannot give any weight to that testimony.

Mr. Anderson: He said he was in Harrison County. 960½

The Witness: Well, I was through all of these counties during the war, more or less.

The Special Master: Of course if you were through them, it is all right, you can testify about them.

Mr. Anderson: He was auditor of the State Government which was stationed at Wheeling.

The Special Master: Of course, if the record shows he was through there, where he would have an opportunity of having personal knowledge, he can testify.

The Witness: I passed through these counties—

The Special Master: But, except as to places where he has personal knowledge, there is no use to fill up the record. I cannot give any weight to a statement that is purely hearsay, you know.

Mr. Anderson: I don't want any hearsay testimony.

The Witness: The counties north of Harrison County were generally pretty prosperous.

Re-Direct Examination.

By Mr. McClintic:

Q. Was it not after 1863 that the counties on the Ohio River, and in the north part of the State, were safe from Confederate raids.

A. Yes, sir; from all depredations, I think. They were safe at that time.

Q. Were not all the Confederate sympathizers, and practically all of the Confederate guerillas run out of that section by that time?

A. Well, mostly. There were only occasional raids made in there. 961

Q. What proportion of the able-bodied men of your section of West Virginia went into the armies, on either side?

A. Well, Roane, Jackson and in there, I should say there were mighty near seventy-five per cent. of them in both armies.

Q. On one side or the other?

A. Yes, sir. Men between the ages of 18 and 45; I should say there was as much as seventy-five per cent. in one army or the other.

Q. Did not these counties in the northern panhandle and through that section get their so-called prosperity, which Mr. Anderson spoke of, in the last years of the war, when they were absolutely safe from intrusion, after the formation of the State of West Virginia?

A. Yes, sir; after all fears of the Confederate forces coming in there, they went right on in prosperity, I believe.

Q. Look at the table handed to you and state who made that and where you got it from?

Mr. Anderson: What table is it?

Mr. McClintic: A table made by him from certain reports.

Mr. Anderson: I have not seen a copy, have I?

Mr. McClintic: I will show it to you in a moment.

The Witness: I made this table myself.

Mr. McClintic: The following table shows the capitation returns by the Commissioners for taxation, as shown by Auditor Bennett's report in the several counties of Virginia for the year 1860, that afterward formed the State of West Virginia, and also the capitations returned by the assessors in the same counties for the year 1865, shown by auditor's report for the State of West Virginia. 962

The Special Master: This is a computation from figures already in evidence?

Mr. Anderson: Yes, sir.

The Special Master: You do not care to cross examine on that?

Mr. Anderson: No; I do not suppose so.

The Special Master: Well, if this does not follow the material in evidence, it is of no value, and if it is based on that report, and the reports do not sustain it, that impeaches it.

The Witness: In but two counties, as I remember, the capitations of 1865 are estimated, and that in Greenbrier County, and I believe in McDowell County.

The Special Master: Then with the exception of two counties, Greenbrier and McDowell, that is simply a computation made from a record that is already in the case, and as to Greenbrier and McDowell, you simply made an estimate; is that right?

The Witness: Yes, sir. I think it is McDowell County.

The Special Master: Greenbrier was controlled by the Confederates for a greater part of the time, was it not?

Mr. McClintic: Yes, sir. I will hand this to the stenographer.

The paper referred to is as follows:

"The following Table shows the Capitations returned by the 963
Commissioners for taxation shown by Auditor Bennett's report in the several counties of Virginia for the year 1860, that afterward formed the State of West Virginia, and also the capitations returned by the Assessors in the same counties for the year 1865, shown by Auditor's report for State of West Virginia:

County	1860	1865	Decrease	Increase
Barbour	1,812	1,635	177	
Berkley	1,932	1,742	190	
Boone	846	705	141	
Braxton	1,008	917	91	
Brooke	1,031	883	148	
Cabell	1,495	1,275	220	
Calhoun	420	366	54	
Clay	314	321	....	
Doddridge	936	829	107	
Fayette	1,115	834	281	
Gilmer	646	522	124	
Greenbrier	2,278	1,900	378	
Hampshire	2,663	2,171	492	
Hancock	884	880	4	
Harrison	2,669	2,425	244	
Hardy	1,709	812	897	
Jackson	1,545	1,333	212	
Jefferson	2,045	1,674	371	
Kanawha	2,596	2,966		370
Lewis	1,456	1,187	269	
Logan	824	694	130	
Marion	2,422	2,134	288	
Marshall	2,192	1,958	234	

McDowell	270	185	85	
Mason	1,504	2,103	....	499
Mercer	1,185	1,014	171	
Monongalia	2,420	2,006	414	
Monroe	1,963	1,782	181	
Morgan	777	742	35	
Nicholas	964	787	177	
Ohio	4,132	4,410	....	78
Pendleton	1,180	995	185	
Pleasants	554	515	39	
Pocahontas	829	596	233	
Preston	2,586	2,381	205	
Putnam	1,181	985	198	
Raleigh	642	548	94	
Randolph	941	775	166	
Ritchie	1,176	1,166	10	
Roane	1,010	793	217	
Taylor	1,406	1,414	....	8
Tucker	259	260	....	1
Tyler	1,213	1,094	129	
Upshur	1,273	1,325	....	42
Wayne	1,272	1,082	190	
Webster	138	130	8	
Wetzel	1,236	1,256		20
Wirt	729	623	106	
Wood	2,654	3,076	....	322
Wyoming	455	437	18	
	68,988		7,436	970

[*Vol. 7. July 2, 1909. Certain Exhibits filed.*]

Now, then, we come to 5. As to that, as I understand it, it is a physical impossibility for these accountants, by the exercise of any human diligence, to get together and get results predicated upon the original papers that they feel they ought to 998
refer to. I think it is quite proper for them to be able to go back, and to go back to the original source of information. Neither party is bound by the report of any auditor or referee. They are all entitled to the original sources of information, if they want it. Now, upon that item there is to be predicated, as I understand it, some evidence that is ready to be presented on

the part of the plaintiffs, the result of which will depend upon the results reached by the auditors.

Mr. Anderson: Not entirely, sir.

The Special Master: If the auditors reach one sum, the pro- 999
portion upon which the plaintiffs rely would be one sum. If the auditors reach another sum, that same proportion of course would result in another sum. That is the only change, as I understand it, and the only effect that the advice to be submitted by the auditors could have upon the evidence to be submitted by Virginia. Suppose you claim that a certain one-half of a certain sum to be the sum allowed by me, and if the principal sum, to illustrate, was $100,000 one-half would be $50,000. If the principal sum was $50,000, one-half would be $25,000. Of course you could not have an expert state, without having first the sum upon which you would begin settled so as to go in the record; but the experts could give us the result later, and you could give us your testimony establishing the proportion, and when we print the case we can put in what the experts find in the matter, and the court will see that, and as far as I am concerned it does not make any difference, and it will not make any difference; and the court will never know but what there was introduced here the testimony of the experts giving the sum upon which you make the proportion. The only thing left, as I understand it, is the report of the auditors upon which your percentages are predicated. Am I right?

Mr. McClintic: If your Honor please, there are other things here I intended to prove by Mr. Scoville, which Mr. Dixey is not familiar with, and knowing his illness and absence. 1000
I am at a loss to know how to proceed.

The Special Master: Let us settle this point first. How does that strike you, Mr. Attorney General?

Mr. Anderson: Part of your Honor's statement presents the position of the plaintiff, but we have other evidence on which we rely, tending to show what was the fair value of all the property in the two States.

The Special Master: What is it; have you got it in depositions?

Mr. Anderson: The depositions of a number of witnesses.

The Special Master: What harm is there is submitting it right now?

Mr. Anderson: That is what we propose to do; and besides that we propose to show a number of sales, taken from the records within the boundaries of the present State of Virginia, which have been tabulated.

The Special Master: There is no objection, then, to your submitting your evidence under this paragraph without waiting for the accounts of the accountants.

Mr. Anderson: I introduced the deposition of Robert W. Hunter and others.

The Special Master: Plaintiff introduces the depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Phillip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams and W. Gordon McCabe, taken in the City of Richmond, State of Virginia, on the 4th of June, 1909.

Were the other side given notice?

Mr. Anderson: Yes, sir.

The Special Master: Very well, they can go in.

(The depositions referred to were filed and marked Virginia No. 1.) and will be found at the end of the session.

The Special Master: Have you any more depositions, Mr. 1001 Attorney General?

Mr. Anderson: Yes. I will have some oral testimony in a moment. I wish now to put in a statement showing the depreciation of Confederate money as compared with gold for every month during the War, and particularly to show the depreciation of Confederate money in June, 1863.

Mr. Carlisle: Of course that is a matter upon which the Master can inform himself.

Mr. Anderson: This is a statement approved by the Supreme Court of Appeals of Virginia and has been adopted in thousands of transactions. It is taken from a case decided by the Supreme Court of the State.

Mr. Carlisle: Was West Virginia a party?

Mr. Anderson: No; but this settles the question.

Mr. Carlisle: Let it go for what it is worth. We don't think it is worth very much.

The Special Master: I suppose as to this, the financial records of that time would probably bear out that statement.

Mr. Carlisle: The records of the Treasury department at Washington would show that, would show it for every day.

The Special Master: I understand that this is objected to and is admitted *de bene*, and I would like to have counsel for West Virginia take it and verify it, so as to be able to tell me 1002 whether the facts are correctly stated.

Mr. Carlisle: I called upon the Treasury Department for information along this same line, and expect to get it from them.

The Special Master: Is it understood by counsel for Virginia?

Mr. Carlisle: I want to say this; that I desire also to give a statement likewise, for your consideration, as to the value of the United States greenbacks in comparison with gold, at the same time.

The Special Master: Well, I suppose if I open the question as to respective values, I should probably go into a maze as to respective values of gold and greenbacks and Confederate money and gold.

Mr. Carlisle: Of course, you would, because West Virginia's money was the greenback.

The Special Master: That is a matter for me to consider. But what I want is this: Will Virginia consent that Mr. Carlisle may submit as a part of the record in the case a statement from the Treasury Department showing, during the period covered by your statement, the value of gold and greenbacks?

Mr. Anderson: Yes, sir.

Mr. Conrad: In Virginia.

Mr. Carlisle: And in West Virginia.

The Special Master: Now, this statement here, this only goes so far as to allow the defendants to submit as a part of the record a statement from the Treasury Department as to financial facts that will make no conclusions whatever.

Mr. Carlisle: No conclusions; only figures.

The Special Master: And whatever that statement is, it 1003 will be submitted to the other side, and whether that proves anything or not, of course is another question.

Mr. Anderson: I suppose that ought to be marked plaintiff's Exhibit E-2.

(The paper referred to was filed with the stenographer and marked "Plaintiff's Exhibit E-2.)

Mr. Anderson: I wish to introduce Plaintiff's Exhibit E-3.

Mr. McClintic: That is introduced over our objection, very strongly.

Mr. Anderson: Read the caption, please.

The Special Master: Without stopping to discuss this, how does a valuation, for instance, in 1867, have any legitimate bearing on what the valuation was in 1863; what kind of a door does that open?

Mr. Anderson: I think we will show the bearing.

The Special Master: I will admit this *de bene*, but with the suggestion that unless some connection is shown which I do not see, it may not be of much value. It cannot do any harm. I shall not give any weight to it to which it is not entitled. It comes right down to 1908. I will hear you on that, I say.

Mr. Harrison: We can show you the bearing, I think, when the time comes.

Mr. Anderson: Are these figures taken from the Auditor's report of West Virginia and Virginia?

Mr. Potter: Yes, sir.

Mr. McClintic: We will not admit anything on that.

Mr. Carlisle: Mr. Potter will testify, I suppose, that these 1004
figures are correct?

Mr. Potter: Yes, sir.

Mr. Anderson: We expect to be able to suggest reasons to your Honor which will be persuasive as to the value of those figures.

Mr. Potter: I said that was taken from the records. It is, with the exception of $9,000,000 introduced as the value of railroads in Virginia between 1867 and 1879, for which we had no report, as covered by the note at the top of the second page.

Mr. Anderson: They were not assessed in Virginia at that time, but we took them—

Mr. Potter: Value in 1880—

Mr. Anderson: Which was probably fifty per cent more—

The Special Master: Do you want to spend any time in inquiring about that?

Mr. Anderson: We wish to introduce this Exhibit as Plaintiff's Exhibit E-4. It is a statement of the value of real and personal property, assessed values, in 1861, taken from the Auditor's report.

(The paper referred to was filed and marked Plaintiff's Exhibit E-4.)

The Special Master: That is all going to be covered by the statements that they are going to get up between them, that we have already agreed on.

Mr. Anderson: If that is introduced, it will be substituted 1005
for this, but we have to have this in order to support the next statement.

The Special Master: Does not this show that you have agreed on the assessed value of real estate for 1863?

Mr. Anderson: Yes.

The Special Master: That is what this shows (Indicating)?

Mr. Anderson: No; personal property.

The Special Master: Then, when you get in the statement that the experts are to agree on—

Mr. Anderson: This is by counties. We do not think we will need the other statement.

The Special Master: If it does not agree with the other statement it will not go for anything, because Mr. Dixey and Mr. Potter will present a statement signed by both of them, and if this schedule does not agree with that, this schedule will not go for anything. I shall not submit any schedule submitted by Mr. Potter which does not agree with the joint schedule. There is no occasion for duplicating it. Have we not already agreed that Mr. Potter and Mr.

Dixey should give us, first, the assessed valuation of personal property as appears from the official records, in 1860; next in 1861, and next in 1862 and next in 1863; have we not agreed to that?

Mr. Anderson: Yes, sir.

The Special Master: That settles the official valuation by counties for those four years.

Mr. Anderson: Except that we insist that in 1863 it was made with reference to Confederate money. 1006

The Special Master: We will hear your argument on that later, but there is no occasion for duplicating a schedule on that.

Mr. Anderson: Well, we will withdraw that.

The Special Master: Now, then, is there anything else you have to offer?

Mr. Anderson: We wish to introduce testimony to show a number of sales of real estate at that period.

Mr. Carlisle: We object to that.

Mr. Anderson: Sales of property?

Mr. Carlisle: Yes, sir.

Mr. Anderson: I would like to recall Mr. Lightfoot.

JOHN B. LIGHTFOOT, JR.,
a witness previously produced and sworn on behalf of the plaintiff, is recalled for further examination; and took the stand as a witness:

Mr. Carlisle: You have gone to the records and segregated certain sales and found the considerations stated in the deeds, which may be true and may be false. Many deeds are made for a consideration of one dollar, and the consideration named in the deed does not prove the value of the property.

Mr. Harrison: If the evidence is of no value, then it will not do you any harm.

Mr. Carlisle: If there is a deed on record which shows that a certain lot which sold for a certain price on a certain day, that does not prove the value of that lot?

Mr. Harrison: It proves something in reference to that 1007 property, yes.

The Special Master: The defendants object to all the evidence that is submitted to Virginia on this line. The plaintiffs now propose to show what the record shows, as I understand it, with reference to a particular lot in 1863.

Mr. Carlisle: Several lots.

Mr. Anderson: A great number of lots.

The Special Master: Well, a number of lots, then.

Mr. Carlisle: 58 or 60, perhaps.

The Special Master: I propose to submit this evidence *de bene;* but it is subject to all the legal objections made by West Virginia. Now, why do you not put this schedule right in. Mr. Lightfoot, as I understand it, testifies that the computations shown upon that schedule are computations made by him from the original records, and so far as they are made from deeds which purport to show the consideration, they are accurately made.

Mr. Carlisle: From the deeds on record, yes.

The Special Master: Yes, sir. Of course, whether that proves the consideration of that particular sale is another thing, perhaps. Does that cover everything you want?

Mr. Anderson: No, sir. I want to prove by him whether this included all he could trace. We are not only prepared to prove what these properties sold for, but what the assessed value of these properties was.

The Special Master: I understand this schedule states that, and without going over it in detail, I understand it may be stated on the record that Mr. Lightfoot testifies that the figures appearing here are the accurate result of the examination of the 1008
original records, both of conveyances and assessments.

Mr. Anderson: It will not be necessary to encumber the record with the original deeds?

The Special Master: Not unless the other side wishes to do that.

Mr. Carlisle: Oh, no.

The Special Master: That schedule is admitted, and Mr. Lightfoot so testifies.

Mr. Anderson: (Addressing the witness, Mr. Lightfoot.) Please state what proportion of the property that was sold at that time as shown by the records of the State and which took place in Richmond City and Henrico County, Hanover County and Chesterfield County, you show in this schedule?

The Special Master: What proportion of the actual sales that appear upon the record during that period that he has made a note of in this schedule. That calls first for the question whether he examined the record in these various counties for the purpose of determining how many sales were made of real estate.

Mr. Lightfoot: I did, sir, in this way—

The Special Master: Very well. What proportion of the actual sales which you found recorded on the records are represented in this schedule?

Mr. Lightfoot: As to Henrico County, Hanover County and Chesterfield County, they cover all sales which I could find by an examination of the deed books for the year 1863, as to
which I could trace the assessments of that particular prop- 1009
erty.

The Special Master: Well, now, that does not give any information. How many deeds were on record which you could not trace in the assessments books?

Mr. Lightfoot: I could not give you the number.

Mr. Anderson: What proportion?

Mr. Lightfoot: That would be an estimate.

Mr. Anderson: Have you any idea?

Mr. Lightfoot: That would simply be an estimate.

The Special Master: Well, what is your estimate?

Mr. Lightfoot: I should say over one-half.

Mr. Anderson: Because they were parts of tracts of land—

The Special Master: That is immaterial.

Now, then, anything further?

Mr. Anderson: You did not say about Richmond City.

Mr. Lightfoot: For Richmond City the same applies, except that I have not gone through all of the deed books as carefully as I did in the counties. I may have omitted ten or twelve or fifteen deeds, as to which assessments could have been traced; but as to Richmond City I have not made as careful examination of all the deed books as I made in the other cases.

The Special Master: As to Richmond City, your examination is not exhaustive, as I understand it?

Mr. Lightfoot: That is correct.

The Special Master: Does this schedule show where these various properties are located, in what counties?

Mr. Lightfoot: It does, yes, sir. 1010

The Special Master: Yes, I see it.

Mr. Lightfoot: They show the location within the county or city.

Cross Examination.

By Mr. Carlisle:

Q. What period was covered by your examination?

A. It shows on the outside of the schedule, April, May, June, July, and August of 1863.

Mr. Anderson: I desire to file the certificate as to the assessment of those identical properties in 1863. This is a complementary schedule and follows the other, and is subject to the same objection.

(Paper handed to the stenographer and marked Plaintiff's Exhibit E-5.)

Mr. Anderson: Please explain the connection between Exhibits E-4 and E-5.

Mr. Lightfoot: When you examine the certified assessments made by the auditor, you will find one piece of property stated as for three years, in some instances. That was done for the reason that the description in a deed which is shown on this exhibit will be described by the name of the place, for instance. I will take one instance. In the deed it is described as Peoria. On the land book for the same year, you would not find the description "Peoria," but on the land book for 1862 you would find that property described as "Peoria." In those cases I have taken it for 1863 and then for 1862, and if necessary have gone to 1861, until I have located the same description on the land book as contained in the deed.

The Special Master: Does the land book contain descriptions of the property?

Mr. Lightfoot: Yes; so you can identify it. 1011

The Special Master: When a certain piece of land assessed to A has been conveyed by A, is the description on your tax book so complete that you can identify it with the deed to Mr. A?

Mr. Lightfoot: Yes, sir. In those cases where I could not identify it I have left it out.

The Special Master: When it comes to the books, do you mean assessment books contain such a description by feet and distances that you could identify that with the land conveyed in the deed?

Mr. Lightfoot: Yes.

Mr. Anderson: They give the number of the lot and the number of feet front, and so forth.

The Special Master: Well, does this list you give here give the full description that appears in the assessment books?

Mr. Lightfoot: Yes, sir; it gives the exact description.

The Special Master: The list you have submitted as being complementary contains all the description that appears on the assessment books?

Mr. Lightfoot: Yes, sir.

The Special Master: Then, whether it is identical or not is a matter for argument?

Mr. Conley: Whether or not we are getting more, does 1012 it contain anything that the books do not show; does the exhibit just filed contain anything more?

The Special Master: I understand him to say they are exact copies.

Mr. Carlisle: The question is whether his report contains anything more than appears on the assessment book?

The Special Master: I understood him to say that his report, so far as descriptions were concerned, was an exact copy.

Mr. Lightfoot: Yes, sir.

* * * * * * * * *

The Special Master: Finish on paragraph 5, then— 1013

Mr. Anderson: I have now the exhibit which shows the purpose of that testimony, the exhibits filed under paragraph No 5.

The Special Master: This is simply a computation?

Mr. Anderson: Yes, sir.

The Special Master: That can be made any time. It can 1014 be made after the case is printed as well as any other time.

Mr. Anderson: This will be plaintiff's Exhibit E-6.

(The paper referred to was filed by the Stenographer and marked "Plaintiff's Exhibit E-6.)

Mr. McClintic: We reserve the right to make our computations later on that.

The Special Master: You can make them all in the closing argument.

Mr. McClintic: There is a difference between argument and evidence.

The Special Master: There will not be any distinction as far as I am concerned. The computation made by Mr. Potter is subject to the cross examination of your experts, the same as if it was given as oral testimony. It has no more weight and no less weight.

Mr. McClintic: If evidence does not have any more weight than argument, then I will consent to it.

The Special Master: This is simply a computation made by the expert, and if it is questioned, I will make the computation myself.

Mr. McClintic: I understand, but I also understand that they are offering it as proof.

The Special Master: Well, you may have Mr. Dixey make the same computation, and if he does not reach the same result, submit it to me. A fact that the expert swears to has no more 1015 weight with me than if you stated it in argument.

Mr. McClintic: If that is understood, very well, then.

Mr. Anderson: These figures may be modified.

The Special Master: Either side can put into the case at any time any computations they see fit to make, and they can have experts make them. The computations will not bind me.

Now, is that all?

Mr. Anderson: We reserve the right to file an amended statement—

* * * * * * * * *

Mr. Anderson: We have not finished with number 5. I ask 1017 that this be filed as an exhibit.

(Paper handed to the stenographer and filed in the case, marked Plaintiff's Exhibit E-7.)

Mr. Harrison: This is a statement that supports the summary handed in just now.

The Special Master: This is their computation predicated upon what they have already put in?

Mr. Anderson: Yes, sir.

Mr. Carlisle: It goes in under our objection?

The Special Master: Yes.

Mr. Anderson: You prepared that?

Mr. Lightfoot: Yes.

Mr. Anderson: And it is correct according to the records?

Mr. Lightfoot: Yes.

Mr. Harrison: We have never gotten to F, yet.

Mr. McClintic: I want to put in something on No. 5, if you are through.

[*Vol. 7. July 2, 1909. West Virginia Exhibits 1, 2 and 3.*]

Mr. McClintic: Yesterday I gave each one a copy of a 1018
paper taken from the United States Census reports. We have the Census report here.

Mr. Anderson: We object to that.

The Special Master: Yes; it is objected to, but I will admit it *de bene.*

Mr. McClintic: I also want to file a table showing the slave population by counties in West Virginia in 1860 and over and under the age of twelve years, as shown by the Census of 1860. 1019
and the number of slaves assessed in West Virginia. Also a table showing slave population by counties in Virginia in 1860 over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in Virginia in 1860. This was taken from the Census reports and the auditor's reports already in.

Mr. Anderson: We know nothing about that.

The Special Master: I understand that. That is admitted, subject to objection by Virginia. We understand that they are to have their experts compare them with the original sources of information, and they can file a contrary report, if they desire to do so, if they do not agree that this is correct.

[*Vol. 7. Depositions on behalf of Virginia taken June 4 and 5, 1909.*]

DEPOSITIONS TAKEN ON BEHALF OF THE COMMONWEALTH OF VIRGINIA.

In the Supreme Court of the United States

1023

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

Depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Philip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams and W. Gordon McCabe taken in the City of Richmond, State of Virginia, on the 4th and 5th day of June, nineteen hundred and nine, to be read as evidence on behalf of Virginia in the above entitled cause.

In the Supreme Court of the United States

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

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In the Supreme Court of the United States

1024

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

Depositions of William G. Taylor and others taken at the offices of the Attorney General of Virginia, Richmond, Virginia, on the 4th and 5th days of June, nineteen hundred and nine (beginning at 10 o'clock A. M., on the 4th), pursuant to the annexed notice, to be read as evidence by the Special Master and the Court in Chancery cause now pending in the Supreme Court of the United States in which the Commonwealth of Virginia is complainant and the State of West Virginia is defendant.

Present on behalf of the Commonwealth of Virginia William A. Anderson, Attorney General of Virginia, and John B. Moon.

Present on behalf of the State of West Virginia, William G. Conley, Attorney General of West Virginia.

Note: The taking of these depositions was adjourned from 1025 the office of the Attorney General to the Court Room of the Supreme Court of Appeals of Virginia.

Major Robert W. Hunter being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. Please state where you reside, and what official position, if any, you now hold?

A. My legal residence is Winchester, Valley of Virginia, and I am now Secretary of Virginia Military Record, with my office in the Capitol at Richmond, Virginia.

Q. 2. Where were you during the War between the States and if you were connected with the Confederate Army, please state with what commands, and what positions or offices you held ?

A. I was Adjutant of the Second Virginia Regiment of the Stonewall Brigade. For a considerable period, especially when James A. Walker was in command, I was acting Adjutant General of the Stonewall Brigade. At the time of the battle of Gettysburg I was promoted Major of Jackson's old Division, then commanded by General Edward Johnson. Was Adjutant General of Edward Johnson's Division until the 12th of May, 1864, when I became the Adjutant General of Major General John B Gordon, commanding the Division in Early's corps, and remained with him until Appomattox.

Q. 3. State what civil office, if any, you held during that period?

A. I was a member of the Virginia Legislature from the
County of Berkeley, Virginia (now West Virginia) during 1026
the years 1863 and 1864. It may have been earlier than that.
I didn't take my seat except occasionally.

Q. 5. Through what portions of the present territory of Virginia did you travel or march during that period?

A. Our first service was at Harper's Ferry; from there we retired to Winchester, from Winchester transferred to the Battle of Manassas, remained about Centerville until the Command was ordered back to Winchester, in the Valley of Virginia, after Jackson was appointed Major General in command of the Valley.

Q. 6. After that?

A. Then we were chiefly in the Valley of Virginia.

Q. 7. Where did you serve in the year 1862 and 1863?

A. Then came the battle of Kernstown, and afterwards what is known as Jackson's campaign, which covered the entire Valley and extended over towards West Virginia. Then as we returned we crossed over into the Luray Valley—had a fight at Front Royal. I was in the Valley chiefly with Jackson's Army, largely about Winchester and the upper parts of the Valley.

Q. 8. Did you go with Jackson's command to Richmond in July, 1862?

A. Yes, sir.

Q. 9. Did you go with Jackson's command in the march toward Rappahannock?

A. In the battle of Slaughter Mountain I did. I was in that engagement.

Q. 10. Were you with Jackson's command in the campaign 1027
culminating in the Second Battle of Manassas?

A. I was, sir. I was in the railroad cut.

Q. 11. Were you with the Army of General Lee in the march into Maryland—the battle of Sharpsburg?

A. I was, sir.

Q. 12. You remember the date of the battle of Sharpsburg?

A. The 17th day of September, 1862.

Q. 13. You were in the retreat through Northern Virginia back to Richmond?

A. Yes, sir.

Q. 14. Were you in the Fredericksburg campaign of 1862-63?

A. Yes, sir. We were in camp in Caroline County in that winter.

Q. 15. Were you in the army during the campaign of General Lee in 1863?

A. At Gettysburg?

Q. 16. Yes, sir.

A. Yes, sir.

Q. 17. Now, Major Hunter, please kindly state what was the condition of the farms, and generally of the buildings upon the farms, the fences, and real estate generally in the portions of Virginia with which you were familiar during that period, as compared with their condition prior to that period?

A. In the early part of the War property rights were respected to a very considerable extent by both armies. Of course, necessarily the occupation of any territory by an army entails very large damage to that country. A great many fences were destroyed, and a great deal of damage was necessarily done. Now, later on in the War when orders were given to devastate the 1028 country, the country became thoroughly ravaged, fences gone, mills and barns destroyed—a general destruction.

Q. 18. Was there any observable damage done prior to June, 1863, to the fencing, forests and buildings in the portions of Virginia to which you have referred, by reason of the occupation of the country by the two armies?

A. Very considerable damage was done by the occupation of the territory by both armies, necessarily.

Q. 19. What was the effect of the occupation of the country by the two armies upon the forests and timber lands in those regions?

A. A great many of them around Winchester were destroyed almost, and in other parts of the country where our army encamped for a considerable length of time they were almost destroyed. Down in Caroline we made houses of wood. We cut down an enormous amount of timber. We used a large amount of fire wood.

Q. 20. How long were the two armies encamped in the region about Fredericksburg—in 1862-63—prior to the battle of Chancellorsville, which was in May, 1863?

A. McDowell's Army was in the neighborhood of Fredericksburg

during the seven days' fight at Richmond. That country was occupied by the Federal Army very largely. McDowell I think had 30,000 men at least. While The Jackson campaign chiefly was in progress, he occupied that territory.

Q. 21. Where was General Hooker's Army in camp later 1029
in that year?

A. First was Burnside. They were encamped from the Rappahannock to the Potomac—ranged over that whole country. They had a base on the rivers near by, and at Alexandria.

Q. 22. Where was Hooker's Army encamped?

A. Hooker's Army was encamped from Stafford up along about the same region of country that had been occupied by Burnside's Army.

Q. 23. How would you describe, Major Hunter, the effect of the occupation of this region by the Federal and the Confederate Armies respectively?

A. To a very large extent it paralyzed all the agricultural operations. Destroyed fences, and made the pursuit of agriculture almost impossible, except in a very unsatisfactory way.

Q. 24. And now will you kindly state what was the condition of the agricultural interests in Virginia, and industrial interests in Virginia generally, outside of the sphere of occupation by the Federal Army,—inside of the Confederate lines—as to whether the farms were kept up, and as to what was the character of the tillage during that period.

A. The farming operations in other portions of the State not occupied by the Army were indirectly affected, and affected very seriously, but the fact that the labor necessary for carrying on agricultural operations was largely in the Army, or engaged in the support of the Army one way or another. Then there was the negro population—well to their credit it may be said of them that they did remarkably well under all the circumstances—yet a great deal of apprehension in regard to them was felt, and they were being induced away very frequently. 1030

Q. 25. What, within your knowledge and observation, was the result of the operation of the causes that you have mentioned, upon the actual value of real estate in the territory now constituting the State of Virginia—in June, 1863?

A. Well, sir, that is almost entirely a matter of conjecture, but I should suppose that it would be fair—of course I just hazard this—to state that the values were destroyed one-half at least, taking the whole State a large. It is like the value of a buggy when a horse is running away with it. There was a condition of affairs existing which made it impossible to base any satisfactory judgment as to values.

Q. 26. Are you prepared to say whether there was or was not a deterioration in value, and whether or not that deterioration was great or small?

A. There was a great deterioration in values. In the first place our currency began to be very valueless at that time. Began to depreciate very decidedly.

Q. 27. Do you happen to know of any actual sales of real estate during that period, in that territory, and if so, how did the prices compare with the prices before the War, taking gold and silver as a standard of value?

A. Well, a small amount of gold would buy—I couldn't say how much—but relatively three or four times as much as it would at any other time. Sometimes a very much larger amount. It had an exceptional value brought about by the condition of affairs.

Q. 28. Please state, if you can, what the value of the Moss 1031
Neck plantation on the Rappahannock River was in sound money before the War?

A. I should say, without knowing certainly as to values in that region of the country, that it would have been worth $50,000.00. I suppose the house on it cost $30,000.00.

Q. 29. Will you now state what, within your knowledge and observation, was the condition of personal property, farming implements, vehicles, household effects, and other tangible personal property, in June, 1863, as compared with its condition prior to the beginning of the War, throughout the present State of Virginia—as far as your observation extends?

A. By that time—1863—pretty much everything was out of repair. Most of the skilled labor was in the Army, and the workshops, wagon shops, except such as were under government control, has, to a very large extent, broken up.

Q. 30. Had there been any destruction of personal property, destruction and carrying off of live-stock and consumption of live-stock throughout the State of Virginia during that time—had it been diminished in quantity?

A. Yes, very largely, very largely.

Q. 31. Was it in as good condition as it was at the beginning of the War, and before the War?

A. Nothing like, sir. Everything was out of repair, vehicles, farming utensils, and things of that sort.

Q. 32. Would you be prepared to make an estimate of the depreciation of that property in value—as to the specific property and as to the value of the total or aggregate property?

A. I don't think my estimate would be of any value. The 1032
fact is my mind was not intent upon those matters at all at that time, and it is only an estimate that I would have to hazard

now at this period. There are other gentlemen here who have given their attention to values. If I could get enough to buy a uniform and horse, that was all I wanted.

Q. 33. What was the currency of the people of what now constitutes the State of Virginia during that time?

A. At first we had a great many bank notes, and then we had Virginia Treasury notes, but Confederate currency was the currency.

Q. 34. What was the currency in 1863?

A. Confederate.

Q. 35. What was the standard of value within Confederate Virginia with reference to which all transactions between man and man and between the government and citizens were conducted, and all values measured—in 1863?

A. I think the impressment began about that time by the government, and I think a scale of prices to be paid for wheat, corn, bacon, and other supplies was fixed. I think that was fixed by the War Department—the Commissary-General under the authority of Congress of the Confederate government.

Q. 36. What was the measure of values then among the people—what currency—in 1863?

A. Well, it was impossible to get gold except in very small amounts. Very frequently Confederate money was 4 for 1, 5 for 1, 6 for 1, 7 for 1, 8 for 1. The Legislature began at $4.00, then went 1033 to $6.00, $12.00, and I think got up to $40.00 per diem.

Q. 37. In what currency were all those transactions to which you refer?

A. Confederate money.

Q 38. In what currency were taxes paid?

A. Confederate money. There were, of course, Virginia treasury notes. I think pretty much all sorts of paper would go to some extent.

Q. 39. As I understand you, you were an officer in the Confederate Army during all that period, but served at intervals in the Legislature of the State?

A. Yes. sir.

Q. 40. While you were in the Legislature was your attention drawn to the economic and financial condition of the State?

A. Yes, sir, in a very general way, but my attendance upon the Legislature was coming and going. I used it in order to get brief furloughs, but that was about all. I was more subject to the Army than I was to the Legislature. It was only when our Army was not on the march that I was here.

Q. 41. Please state, Major Hunter, what was the condition of the highways and bridges, within your knowledge and observation, in

the present State of Virginia during the period to which your testimony has already referred, and particularly during the year 1863?

A. The highways were in a very wretched condition. I don't know that there was any provision for the repair of the roads at all during the War. There were no toll-gates. They were 1034 not kept up. In our marches we did not respect roads. We marched over the country generally—the best ground we could find.

Q. 42. To what extent were the highway bridges kept up?

A. A great many of them were burnt under orders from one Army or the other, and very frequently never repaired until after the War. Never rebuilt. Of course, where bridges were absolutely necessary for Army operations they had to be repaired.

Q. 43. What was the condition of the railroads in the present territory of Virginia during that time, and other lines of communication, both over land and by water?

A. The railroads were in a very wretched condition. Th supplies of rails had largely given out. The engines became almost valueless. That is stated very clearly in a paper that will appear in the Times-Dispatch on Sunday, by Professor Mallet. The Ordnance Department of the Confederate government and the railroads helped each other out in every way possible. That is all stated in this article of Professor Mallet's—a very interesting one.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine Major Hunter. 1035

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. Major Hunter, you have stated in your direct examination that an order was given to devastate the country during the War between the States—wasn't that order given in 1863?

A. I can't recall the date of the order. I have it in my office. There was an order from General Grant through General Halleck to General Hunter, and that order spoke of devastating the Valley so that a "crow would have to carry its provender."

XQ. 2. That order was issued after General Grant succeeded General McClellan?

A. Yes, sir.

XQ. 3. How long after General Grant succeeded General McClellan or General Meade was this order issued?

A. I can't answer that, Mr. Conley, without reference to the records; but a great deal of damage was done by General Milroy, and other officers in command. General Pope's Army did a great deal of damage. His orders were for the devastation.

XQ. 4. But this was all after June, 1863, was it not?

A. Milroy was in Winchester just prior to the battle of Gettysburg, and Gettysburg was in 1863, and Milroy had issued orders for the indiscriminate use of all property belonging to what he termed rebels. The country was entirely occupied by men of that class. I have a copy of Pope's order which was for the use of prop- 1036
erty of the citizens for Army purposes. This was before the battle of Second Manassas—at the time of the Slaughter Mountain fight.

XQ. 5. In your Army campaigns you have pretended to describe in your direct examination, your mind was particularly directed to the maneuvers of the Army, and not to the condition of the country or property through which you passed, was it not?

A. Yes, sir, almost entirely. It was only incidentally that I observed the property destruction. Of course, it impressed itself on the mind of everyone. You could see it around you wherever you went.

XQ. 6. What territory in the present boundaries of West Virginia did you cover during the period of the Civil War, prior to June 20, 1863?

A. Well, at times we had Berkely and Jefferson Counties—the lower Valley—and we had Hampshire, Hardy Counties, and that country to some extent, then Greenbrier, Monroe and Kanawha, and the counties around Kanawha.

XQ. 7. Were there any bridges destroyed in this territory during your trips through there?

A. The bridges across the Shenandoah were frequently destroyed —sometimes rebuilt and sometimes not. In the retreat of either Army after crossing a river they burned the bridge if was possible—if the pursuit was not too rapid.

XQ. 8. Whose command were you with in the trip through Greenbrier, Monroe and Kanawha counties?

A. Well, I never was there. I just spoke of that from my 1037
knowledge. I was never with any command in that part of the country.

Re-Direct Examination.

By the Attorney-General of Virginia:

Q. 1. What was the number of battles or engagements between the Federal and Confederate forces within the territory embraced by the present State of Virginia, and what were the number in the territory

embraced within the present State of West Virginia, during the War?

A. In the numbers that I give you, you will understand that I range from battles down to outpost engagements and skirmishes—all of them of sufficient dignity to be mentioned in the reports of the Union and Confederate Armies. There were 1,004 in Virginia and 364 in West Virginia. In West Virginia, as a rule, they were of a minor character—not on as large a scale as in Virginia.

Q. 2. In which territory were the engagements of any considerable magnitude and importance, and in which territory were the principal Armies of the two cambatants engaged?

A. In the State of Virginia. There was no great battle within the limits of West Virginia.

The signature of the witness is waived by consent.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers on redirect examination, because they are not relevant and germane
to the issues in this cause, and for other reasons apparent in 1038
said questions and answers.

MR. W. W. SCOTT,
being duly sworn, deposes and says as follows:

By Mr. John B. Moon:

Q. 1. Mr. Scott, what official position do you hold in connection with any Virginia office?

A. I am known officially, sir, as the State Law Librarian of Virginia.

Q. 2. Where were you during the War from 1861 to 1865?

A. I was in the Confederate Army, except during the period from about July 17th, 1862, until about the 1st of November, 1863. During that time I was at the Military Institute, and for a short while at my home in Orange County.

Q. 3. Your home was in Orange County, Virginia?

A. Yes. sir.

Q. 4. What portions of the State were you in during the War—prior to 1863?

A. Well, I was at Harper's Ferry in April, 1861, and in all the subsequent operations of Jackson's Army until we came to Manassas. Spent the winter at Manassas, and fell back with the Army to the line of Rappahannock, and when Ewell's Division was detached and joined General Jackson's Command at Swift Run Gap near Elkton.
I was in the Valley campaign with Jackson—not partici- 1039
pating in the battle at McDowell—but I was in what was
known as the Valley campaign from beginning to end. In the com-

bats with Banks, beginning at Front Royal, through Winchester to Halltown within a few miles of Harper's Ferry, thence back to the Cross Keys and Port Republic, in Rockingham County, thence to the seven days' battles around Richmond, and thence to Gordonsville, in Orange County, where I was discharged from the Army, being under age, on the 16th of July, 1862.

Q. 5. Have you had occasion in connection with any history or publication that you have gotten up, to pay attention and note the financial condition of matters in the present State of Virginia, during the War?

A. I have, sir, in a history of my own county. I have had occasion to make a comparison of the values as stated officially in the Auditor's reports in 1860 & 1861, and 1866.

Q. 6. From your judgment and observation during that period of the War, was there any increase or diminution in the actual intrinsic value of real estate—from January 1, 1861, to June, 1863—if so, what was the difference?

A. Well, if the intrinsic value is to be estimated at all by the market value, or salable value, there was a very considerable decrease.

Q. 7. What was that diminution—what proportion or percentage?

A. Well, I should say, sir, that lands that would have brought $40.00 an acre in say 1860-61 before the War came on, brought very little in comparison more than that in the currency of the 1040 country along in 1862-63.

Q. 8. What was that currency worth in 1863?

A. Well, that currency was very much depreciated. My recollection is that it got as low as at least 6 for 1. I wouldn't testify from memory what the precise depreciation was.

Q. 9. Then, according to the scale, real estate was worth in 1863 less than one-half of what it was in 1861?

A. Undoubtedly, in gold values. Hard money values. Gold and silver were about the same at that time. Silver was a little higher, I believe.

Q. 10. Well, what was the comparison in values of personal property between those two years, taking into consideration the diminution in amount as well as in value?

A. Well, sir, my recollection is pretty distinct that when I joined the Army in 1863 (you know they appraised the horses of the soldiers in the Cavalry) the horse that I was riding was appraised at $1,200.00 in Confederate money, and $100.00 would have been a good price for him in gold—a big price, but for the scarcity of horses then.

Q. 11. Then what, on the whole, would have been the percentage of diminution in values of personalty, considering the diminution in quantity, and in value also?

A. Well, the way I would look at it, personal property of all sorts had become so scarce that by reason of its scarcity it had a fictitious value almost in Confederate money. There were not any horses to spare left, very few cows, very little furniture, very few farming utensils, and very little live stock.

Q. 12. What percentage of diminution in actual value of the 1041
personalty occurred between those periods?

A. Well, I would say that there was ten times as much personal property in 1861 as there was in 1863. When you come to the values, I cannot speak.

Q. 13. Do you mean ten times as much in intrinsic value?

A. Yes, sir. The property was there in 1861 and in 1863 it wasn't there.

Q. 14. What was the currency of the country in 1863?

A. I was paid off once—the first time I think—in State Bank notes; after that I never saw anything but Confederate money, and these little shinplasters. Taxes were paid in Confederate currency—it was all known practically as Confederate currency, except the provision of the Confederate law that one-tenth, I think, of the products of the farm had to be paid in kind—wheat, corn, tobacco, potatoes—on everything that a soldier could eat, you had to pay a tax in kind.

Q. 15. You speak of being paid off in Virginia Treasury notes, was that early in the War?

A. I said I was paid in Virginia Bank notes. The first thing paid to me as a soldier, as I remember, was Virginia Bank notes.

Q. 16. That was in 1861?

A. In 1861. My recollection is that it was paid in Virginia Bank notes.

Q. 17. After that time were all payments in Confederate money?

A. So far as I remember, yes, sir. I saw nothing else during
the War but Confederate money, and these shinplasters that I 1042
spoke of, and occasionally Virginia Treasury notes.

Q. 18. Did any of them pass at any higher rate than Confederate money?

A. All on one common level.

Q. 19. All taken as Confederate money?

A. Yes, sir.

Q. 20. Then I understand that Confederate money was the standard measure of value in 1863?

A. There was none other that I know of.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. Mr. Scott, when you speak of the values, you are only speaking as to your opinion, are you not—as to the measure of values?

A. Well, I should say of my own knowledge, sir, as based on facts. Some things would be my opinion, but I was careful to state only facts which came under my personal observation.

XQ. 2. When you stated in your direct examination that 1043
there was ten times as much personal property, and that the property was of ten times the value in 1861 as compared with 1863, is not that simply your opinion?

A. Well, it is my opinion as to matters at large, sir. It is my knowledge as to matters within a restricted area. I know, for instance, the conditions of my own immediate neighborhood, for I was there in 1863. You remember (no, you were too young to remember) that, in the first place, there was a call for contributions of horses and wagons to the army, which were freely rendered, and after the spirit of contribution became exhausted there were impressments. The negro slaves were drafted by a court order. Two hundred at one time were taken from the County of Orange in 1863, which is a small county, and sent down to work on the defenses around Richmond.

XQ. 3. What time in 1863?

A. If you will let me look at this book I will tell you. I have copied the order. I can't give you the exact time without referring to that. I copied it from the court order. At a special term, January, 1863, two hundred able bodied slaves—negro men—

XQ. 4. Mr. Scott, when you spoke of the increased value of horses along about 1863, isn't it true that the value of horses, as a matter of fact, was much more at that time, because they were more in demand?

A. Yes, sir, and fewer of them, that is in my judgment, sir.

XQ. 5. When you spoke of the value of Confederate money, you meant that Confederate money was used as the medium of exchange?

A. Yes, sir, as the medium of exchange.

XQ. 6. And not as a unit of value? 1044

A. It was our only unit of value. The Confederate dollar was the only unit of value that we had. It wasn't considered loyal to traffic in gold and silver in this old Commonwealth during the war.

XQ. 7. On what was the value based?

A. You mean the value of the Confederate money—it was based on an abiding faith, sir, that we were going to be a nation and pay our debts.

XQ. 8. What did you measure the value of the Confederate money by?

A. Well, I don't know that I catch the meaning, Mr. Attorney General. I would be glad to answer frankly, sir.

XQ. 9. You must have had some comparison of value?

A. Well, we expected with absolute faith that the Confederate States would pay these notes dollar for dollar. We thought they meant a dollar measured in gold and silver— the standard value.

XQ. 10. Then is it not a fact your Confederate money after all was measured in value with gold and silver?

A. An abiding faith, yes, sir.

Redirect Examination.

Q. 1. Will you please state what month it was in which your horse was valued at $1,200.00?

A. It must have been sir, the very last of October, or the 1045 very first of November, 1863.

Note: The State of West Virginia, by her Attorney General objects to the foregoing question and answer, because it is not relevant and germane to the issues in this cause, and for other reasons apparent in said question and answer; and without waiving said objection, proceeds to re-cross examine the witness.

Recross Examination.

By the Attorney General of West Virginia:

XQ. 1. By what method was that horse valued?

A. The rule was that when your horse was killed (we furnished our own horses)—when the horse was killed the Quartermaster paid you for it, and in order to have a basis for payment when you joined the regiment your horse was appraised and reported to the Quartermaster as of such a value, and when he was killed, they paid you that much, and you could probably get one-twelfth as good a horse by that time for that amount.

XQ. 2. What was the assessed value of that horse as shown by your assessment books?

A. Well, sir, I was hardly more than a lad in short breeches. It was my father's horse, not mine. I said in my preliminary examination, sir, that $100.00 would have been an excellent price for him.

XQ. 3. And that was about the value it was assessed at in your assessment books?

A. Well, I couldn't tell you about that. I was about 17 1046
years old, I think, in 1863.

XQ. 4. Haven't you obtained the value of the assessment at that time, since then?

A. Hardly of that particular horse.

XQ. 5. Of horses generally?

A. Well, I will say, as I said in the beginning, that horses of that character would sell around about $100.00.

XQ. 6. Were they assessed at more or less than their selling price?

A. That is a matter of the taxpayer's conscience—he takes an oath—

XQ. 7. I am not speaking of any particular horse. I am speaking as to a matter of fact—what the assessment shows during that period.

A. I am wholly unable to answer that question, sir. I never saw a tax ticket until after the war. I don't want to evade the question.

XQ. 8. How long after the war?

A. Well, I was twenty years old the day after Appomattox, and I paid no taxes myself until 1867.

XQ. 9. I believe you stated you were State Librarian of Virginia?

A. I was the State Librarian. Am now the State Law Librarian.

XQ. 10. Will you examine the assessment book of personal property in your county in 1863, and state from it what the assessed value of horses were at that time?

A. If I can have access to that book, sir. I have published a a tabulated statement—

XQ. 11. On page 173 of the book published by yourself, en- 1047
titled "History of Orange County, Virginia," you have for the year 1860, given the number of horses as 2,991, and the total assessed value thereof, $150,328.00, what would be the average assessed value of those horses in that county for that year—would it not be in round numbers about $50.00 each?

A. It would be that sum ($150,328.00) divided by the number of horses. What the apportionment is would be the assessed value —I can't do it in my head.

XQ. 12. Well now, that being true, you would not pretend to say, would you, that horses, cattle, and other personal property were assessed in Confederate money?

A. In 1861 there was no Confederate money. It hadn't come out. The assessment was made as of the first of February, you know.

XQ. 13. Well, in 1866 how were the assessments made?

A. In 1866 they were made on the basis of the United States currency?

XQ. 14. Will you examine the personal property book of your

county for the year 1863, and give me the assessed value of horses and cows for that year?

A. I haven't the access to that book. I will do it if you will give me the book.

The signature of the witness is waived by consent.

Note: Since the taking of these depositions, Mr. Scott 1048 has examined the Commissioners returns to the Auditor of Public Accounts from Orange County, as requested in XQ. 14, just above, and made the following statement:

"I have examined the Commissioner's Returns to the Auditor of Public Accounts for 1863, from Orange County.

The average assessment, for taxation, was about $160.00 for horses, about $40.00 for cattle, for all ages and conditions. This, I think, was about four times as much as the same stock, or stock of like kind, would have been assessed at in 1860, for taxation."

COLONEL JOHN P. BRANCH,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. What is your place of residence?

A. Richmond, Virginia.

Q. 2. What is your occupation, and what position, if any, do you hold?

A. I am President of the Merchants National Bank of Richmond, Virginia.

Q. 3. About how long have you been president of that bank?

A. About 28 years, I would say.

Q. 4. Where did you reside during the War between the States?

A. Petersburg, Virginia.

Q. 5. Did you have any connection with any business or 1049 banking house at that time—during the War between the States?

A. Yes, sir. I was partner with my father in business during the war.

Q. 6. What was the style of the banking house?

A. In the early part of the war we were commission merchants representing the farming interests of the State. Afterwards we went in the banking business during the War.

Q. 7. Did you have any connection with the Confederate Army during the War.

A. Was a soldier, and surrendered with General Lee at Appomattox C. H.

Q. 8. Over what portions of Virginia did you travel or march during the War, Colonel?

A. I was stationed mostly around Petersburg—in the Provost Marshal Department most of the time.

Q. 9. State, if you please, what, within your observation and knowledge, was the condition of the fencing and buildings and lands of the present State of Virginia during the War, and particularly during the year 1863, two years after the War had commenced—as to whether they had deteriorated or improved in value during that period?

A. Deteriorated very much.

Q. 10. What was the condition of the fences upon those farms?

A. Worse than they were in 1861 by far.

Q. 11. What was the condition of the buildings?

A. Worse too.

Q. 12. What was the condition of the buildings in the towns 1050
—for instance the City of Petersburg, or other towns with which you are familiar—whether they had been kept in repair or deteriorated?

A. Deteriorated in value very much when General Grant got to Petersburg and shelled the town.

Q. 13. What was the condition of the personal property in the State—live-stock, farming utensils, vehicles of every kind, household effects, furniture, and so on— as to whether it had depreciated in value during that period?

A. Depreciated in value very much.

Q. 14. What was the currency in use in Virginia during that time—in 1863?

A. Just after the War commenced the banks made very large loans to the Government in bank notes, and for a few months that money was distributed, but, of course, that gave out quickly and Confederate money was the currency from that time on, except what was issued by the cities. All of the cities in Virginia issued, most of them, what was known as shinplasters, and all of them were repudiated except Petersburg, where I was born, and she paid every one dollar for dollar.

Q. 15. What was the standard of value with reference to which all transactions were made in 1863?

A. Confederate money.

Q. 16. If gold was used at all, how was it treated—as a commodity?

A. Bought and sold as a commodity. Didn't circulate at all.

Q. 17. Have the books of the firms of which you were a member been preserved?

A. Yes, sir; they are all preserved, but I haven't been able 1051 to find all of them. I have found some of them.

Q. 18. Did you keep yourself informed as to the transactions of your house, upon your visits to your home, and at intervals during the War?

A. I would say that I knew from time to time what was going on, but not all the time.

Q. 19. Not in detail.

A. No, sir.

Q. 20. You were familiar with transactions that were going on in the communities in which you were at that time—Petersburg and Richmond?

A. Yes, sir; a general view of them, yes, sir.

Q. 21. You have said that there was a deterioration in the value of both real and personal property in 1863 as compared with its value before the War began?

A. Yes, sir.

Q. 22. Are you prepared to say what the deterioration in the actual values of personal property in Virginia, and of real property were, between January, 1861, and June, 1863?

A. Personal property was very much depreciated for over two years.

Q. 23. Are you prepared to say as a minimum what that depreciation was—any particular property?

A. Flour sold in May, 1863, for less than $3.00 a barrel in gold.

Q. 24. What was it worth in 1861 about?

A. I would say never less than $5.00 a barrel, and some- 1052 times as high as $10.00. In 1847 it brought over $10.00 a barrel. I remember that, because that was the year of the Irish famine.

Q. 25. Do you remember what flour and wheat sold at in Virginia in 1856, or along there after the Crimean War?

A. I think wheat went up $2.00 a bushel in that year. I would say that the price of wheat in Virginia previous to the War was 90 cents to $1.20, according to the crop. It may be interesting to you for me to state some facts in regard to the South, and Virginia in particular. We were an exporting people. For instance, take the South, the whole cotton crop went up. Now when you come to Virginia, Virginia exported tobacco, wheat, and corn, and when the War commenced all that export business suffered you know. We couldn't get it out. Of course everything was very much depreciated. Farm supplies were very much depreciated in prices because there was no demand, except what we could sell to the Army.

There were one or two exceptions—we might state horses which were very much needed for the cavalry and artillery. Everything got so scarce that General Lee on his retreat from Richmond and Petersburg to Appomattox C. H.—his troops were fed on corn. And when we got up to Appomattox C. H. we didn't have that. We surrendered on Sunday morning. After that General Grant sent in a big supply of corn and everything. Cotton sold as low as 2 and 3 cents a pound on the gold and silver value.

Q. 26. How was it with tobacco?

A. That didn't sell much better. One reason why tobacco sold so low was that there was nowhere to keep it. The barns were all burnt. The negroes were much depressed in prices. I 1053 bought a servant in July, 1863, on the basis of about $225.00 in gold. That servant would have brought certainly $1,200.00 in 1860 previous to the election.

Q. 27. What was the effect of the War upon the value of negro slaves?

A. It depreciated them very much.

Q. 28. It depreciated their actual value with reference to hard money as a standard of value?

A. Yes, sir, very much. As I think I told you, in July, 1863, I bought a servant for about $225.00 in gold.

Q. 29. And he would have been worth at least $1,200.00 before the War?

A. Yes, sir.

Q. 30. What was gold selling for in May and June, 1863, as shown by the books of your house?

A. In April, 1863, it sold for 6 to 1, in July it sold for from 9 to 1 to 10 to 1.

Q. 31. You know what it sold for in May?

A. Gold was appreciating all the time and Confederate money was depreciating, so I would say it certainly sold higher than that in May and June.

Q. 32. In June was it higher?

A. Necessarily, it couldn't have been any less. As you see here in April it sold for 6 to 1, and in July it sold for from 9 to 1 to 10 to 1. So you see in 3 months it had gone up. In August it sold for 15 for 1.

Q. 33. What would you say would be a fair estimate of the depreciation of real and personal property in Virginia in 1054 June, 1863, as compared with its value, say, in January, 1861—I mean its actual value?

A. I don't consider that I know enough to express an opinion in regard to real estate. It was very much depreciated, and there was some other remarkable cheap sales that were made in Confederate money, but I am satisfied (though I am not speaking of any sale I

now remember) that it depreciated fully one-half. The negro property had depreciated two-thirds. And then provisions were cheap.

Q. 34. Tobacco and cotton and things of that sort?

A. I would say the whole shebang averaged 50 per cent, with some exceptions.

Q. 35. In actual value?

A. In gold, yes, sir.

Q. 36. What was the condition of the highways, roadways and turnpikes in the State in 1863—2 years after the beginning of the War?

A. I don't know very much about the turnpikes. I wouldn't say the country roads were very bad because there was so little travel on them. But the railroads, well they just got worse and worse. To give you some idea. From Richmond to Petersburg after the War—21 miles—the schedule time after the War was 2 hours. It took 2 hours as a general thing to go 21 miles.

Q. 37. What was the condition of the railroads in the Spring of 1863—as to the equipment, track and roadbed?

A. Bad.

Q. 38. How were other lines of communication, for instance, 1055 the water lines, canals and rivers—was satisfactory service furnished by steamship lines?

A. There wasn't any. They stopped running steamboats on the James River in 1861. In 1861 they didn't run them down any further than Jamestown.

Q. 39. How about the Rappahannock?

A. I don't know anything about that. In January, 1863, I wouldn't say that any steamboats were run at all so far as James River is concerned.

Q. 40. Is your estimate of the depreciation in values of real and personal property in the present State of Virginia being as great as at least 50 per cent. in June, 1863, confined to the portion of the territory of Virginia then within the Confederate lines, or do you include the whole State?

A. I have no knowledge on which I could form an estimate of the property in that part of the State in the Yankee lines. I have no knowledge of that at all.

Q. 41. Is your estimate then confined to the territory inside of the Confederate lines in 1863?

A. Yes, sir.

Q. 42. Do you take in account then the destruction of fences, property, and the carrying off of property inside of the Federal lines?

A. I don't think the fences were hurt much except where the army went by (you are trying to find about 1863 now)—I don't say that

the fences had depreciated very much except where the armies went by. You know they took everything as they went along. They camped near the west end of the town here and burnt all the woods.

Q. 43. In what currency were taxes paid in 1863? 1056

A. Confederate money.

Q. 44. In Confederate money?

A. Yes, sir.

Q. 45. With reference to what currency was personal property valued for taxation in 1863?

A. I don't know.

Q. 46. Do you remember anything as to the assessments of personal property?

A. No, sir.

Q. 47. You only know that the taxes were paid in Confederate money?

A. Yes, sir.

Q. 48. And that Confederate money was the currency of Virginia at that time?

A. Yes, sir. Of course there were a few exceptions where a man sold his property for other things. They swapped farms and things for something else.

Q. 49. They bartered?

A. Bartered, yes, sir.

Q. 50. What was the condition of wagons and farming implements at that time?

A. They must have been very bad.

Q. 51. What is your age, Colonel?

A. 78 years of age.

Note: The State of West Virginia, by her Attorney 1057
General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney General of West Virginia.

XQ. 1. Colonel, do you remember the assessed valuation of horses in 1863?

A. No, sir.

XQ. 2. What is your best recollection?

A. Well, I would say that they probably sold better than anything else, because they were more in demand. If I had been the

assessor I would have assessed them higher because there was more demand for them.

XQ. 3. In 1863 what would an ordinary horse sell for in Confederate money?

A. I couldn't form any idea of that at all.

XQ. 4. What would a slave sell for in Confederate money at that time?

A. I bought this slave for $2,000.00 in Confederate money. Money was selling at from 9 to 10 for 1, which I estimated to be about $225.00 in gold.

XQ. 5. The value of other personal property was about the same ratio, was it not?

A. No, I think negroes were as much or more depreciated than anything else.

XQ. 6. Well, then, if you had a horse valued at $200.00 1058
in gold, it would sell for more $1,200.00 in Confederate money?

A. In June, just about $1,200.00. I don't know anything, not even a horse, that sold as high in 1863 as it did before the War. In other words, everything was being depressed. No business was being done. The cities issued these shinplasters to support the poor people, and then they repudiated them all afterwards—all except the City of Petersburg, where I was born.

XQ. 7. Wasn't there more demand for horses in 1863 than there was before the War?

A. Of course there was. Everything was low. The idea of flour selling at $3.00 a barrel, but afterwards it went up higher and higher, and finally you couldn't get it at any price. We were starving here in 1863, you know. A great deal of the country was occupied by the Yankee Army, and we couldn't get our supplies. The first thing that General Grant did was to cut off the Southern route, and we only had one road left, and that was this road from here to Danville.

Signature of witness waived by consent.

MAJOR PHILIP A. WELLFORD,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. What is your place of residence, Major?

A. Richmond, Virginia. 1059

Q. 2. Where were you born and raised?

A. Fredericksburg, Virginia, and moved to Richmond about 1857.

Q. 3. What is your age, Major Wellford?

A. 75.

Q. 4. Please state where you were during the War of 1861-65, and what position, if any, you held in connection with the Confederate army?

A. I left Richmond as a Lieutenant in the first company that left the City of Richmond, and was sent to Acquia Creek, on the Potomac, first, where we were about two months. We then came down to Richmond, and after being here for a short we went out to West Virginia to meet Garnett and Pegram. From there we went out to Valley Mountain, where General Lee came to take control, and we were there during that summer. In the fall we came back, and in January, 1862, we marched up to Winchester to join General Jackson, and I was then with him until after he was killed, and the Army was brought back to Mine Run. I was in both campaigns across the Potomac. In 1863 I was brought from the Army and put in charge of the mills here, running them exclusively for the Confederate government, where I remained until the evacuation. At the reorganization of the Army in 1862 I went on General Taliaferro's Staff, and as there was some question about having volunteer aides, I was made Commissary in the 23rd Virginia Regiment, then afterwards was Assistant Commissary in Taliaferro's Brigade.

Q. 5. Did you go through the portions of Virginia through which the command of General Stonewall Jackson marched in 1060 1862 and 1863?

A. Yes, sir, up in the Valley, out to Romney, over into Maryland, back to Fredericksburg, all along there.

Q. 6. You were encamped during the winter of 1862-63 in Fredericksburg?

A. Yes, a few miles below there.

Q. 7. The Confederate Army camped on one side of the Rappahannock and the Federal Army on the other side during the winter of 1862-63, did it not?

A. Yes, sir.

Q. 8. Were you with General Jackson's corps when it came to Richmond just before the seven days' fight?

A. Yes, sir.

Q. 9. Were you with his command when it went from Richmond to Orange County in the summer of 1862, and at the battle of Slaughter's Mountain?

A. Yes, sir.

Q. 10. Were you with it in the campaign ending in the second battle of Manassas?

A. Yes, sir.

Q. 11. And you were with it on its return from Maryland after the battle of Sharpsburg?

A. Yes, sir.

Q. 12. Then in the winter of 1862-63 you were with that Army near Fredericksburg?

Q. 13. Did you accompany that Army in the summer of 1863 1061
after the battle of Chancellorsville, when it marched to Gettysburg?

A. Yes, sir, and on its return to Mine Run.

Q. 14. Please state, Major Wellford, what was the condition of the farms and houses, buildings, fences and orchards in the portion of Virginia which came under your observation, and within your knowledge at that time, during the period to which your testimony refers.

A. Well, they were almost desolated. When I returned from West Virginia the first time and went down the Valley it was a perfect garden spot—all the farms were occupied with everything you could think of. A few years afterwards those farms were in a bad condition, nothing had been done towards the fences, or on the buildings. They had no cattle, no horses, nor anything else.

Q. 15. What was the case in Northern Virginia—the region north of Richmond and the Rappahannock through which you marched in 1863?

A. I didn't go on the north side of the Rappahannock because it was occupied by the Federal Army, but knew that whole country well, having been born and raised in Fredericksburg, and it was completely desolated. Nearly all the woods between the Rappahannock and the Potomac were cut down, all the fences destroyed, all the roads ruined, and all of the country south of the Rappahannock that was occupied by General Lee's Army was very much in the same way. I know when we were camped below Fredericksburg at Stringer's Neck, we didn't follow the roads at all. We had new roads cut right across the fields.

Q. 16. Why were those roads abandoned? 1062

A. Well, the roads were in a terrible condition. Nothing had been done to them, and the wagons were turned out of the road into the fields, and I have seen places there where the roads were one-quarter of a mile wide, made so by the wagons turning out farther and farther trying to get on good ground. And from Gordonsville up to Manassas things were not much better.

Q. 17. How was it in Prince William County and Fairfax that you had to march through in going to Sharpsburg?

A. I didn't go through them, except part of Fairfax.

Q. 18. What was the condition of the railroads in Virginia in [illegible]?

A. As bad as they could be.

Q. 19. As to their equipment, track and roadbeds?

A. Well, their equipment, you may say the passenger cars were almost entirely done away with. Almost all of the hauling of soldiers and everything was done in box cars. Trains moved very slowly, very irregularly—rates not over ten to fifteen miles an hour.

Q. 20. What taxes were levied by the government at that time upon the farms?

A. I really can't say about that. I knew nothing about the taxes until I was brought here and put in charge of the mills. The only tax then that I had anything to do with was the tax in kind.

Q. 21. What was that tax in kind?

A. All the farmers had to send in 10% of their crop of wheat and corn.

Q. 22. One-tenth of the gross products of the farm? 1063

A. Yes, sir.

Q. 23. That was exacted by the government?

A. Yes, sir.

Q. 24. Was that in addition to the money tax levied by the State?

A. I think so; yes, sir.

Q. 25. As a result of the causes which you have mentioned, what was the value of the lands in Virginia in June, 1863—the actual value with reference to sound hard money?

A. That is a very hard question to answer. The value of lands had depreciated so much that nobody sold any land unless they were absolutely obliged to. When they were forced to sell, they took the best price they could get. I was not in the real estate business, but I know of the sale of some farms. The Moss Neck farm belonging to a relative of mine, Mr. Corbin, was offered to me in the fall of 1863 for $100,000.00 in Confederate money.

Q. 26. What was that farm worth before the War, Major Wellford?

A. Well, I should say from $40,000.00 to $60,000.00. There had been a house built on it within 3 or 4 years that I know cost $30,000.00. There was another farm belonging to another relative of mine, Dr. William Wellford, that was sold for $100,000.00 in Confederate bonds.

Q. 27. How much was that farm worth before the War?

A. I suppose before the War it was worth $50,000.00 to $60,000.00.

Q. 28. What were the Confederate bonds worth with reference to gold and silver? 1064

A. I don't remember. Then I had a mill near Fredericksburg which I sold in 62 for little over one-half as much as I thought it was worth before the War. I didn't own the mill entirely—I owned one-fourth of it.

Q. 29. You say there had been a great depreciation in the value of real estate. What, as a minimum, would you say was that depreciation in June, 1863, as compared with January, 1861?

A. Well, if you would reduce that Confederate money to gold and compare it with the value before the War, I would say that it wasn't over one-half.

Q. 30. Now this Moss Neck farm that you say was offered to you in the fall of 1863 for $100,000.00 in Confederate money—do you know what the value of Confederate money was at that time?

A. It must have been somewhere from 15 to 20 for 1.

Q. 31. So that it must have been worth then not over $7,000.00 in good money?

A. Yes, sir.

Q. 32. How was it with personal property—had there been any increase or diminution of the quantity of personal property?

A. Yes, sir, an immense diminution in the quantity.

Q. 33. Had there been an increase or diminution in the value of specific personal property as a rule with reference to good money, I mean?

A. It depends upon what kind of personal property you mean. Hogs, if you made them into bacon, would have brought more. Horses, where in the neighborhod of the army, should 1065 you meet one of those dismounted cavalrymen, would bring most any price. You could get all the money he had for a horse. This had very little reference to the price before the war.

Q. 34. As a rule a dismounted cavalryman was not very well supplied with money, was he?

A. No, sir.

Q. 35. How was it with tobacco and cotton, and with negro slaves, as to their value taking good money as a standard of value?

A. I do not know of any direct transactions, but I know the impression that I had after I was brought back to Richmond and living here, was that slaves didn't bring one-half or very little more one-fourth, of what they would have brought before the war.

Q. 36. Lincoln's Proclamation emancipating the slaves was issued in September, 1862, to take effect according to its terms within such portions of the Confederate States as had not then laid down their arms and returned their allegiance to the National Government, on the first day of January, 1863, what effect did that have?

A. Very little until the surrender of Vicksburg and Gettysburg. It was laughed at and ridiculed by most of the people. But after Vicksburg and Gettysburg, we began to be a little doubtful.

Q. 37. Taking all the movable personal property, live-stock, farming utensils, vehicles of every kind, household and kitchen furniture, the stores of tobacco and corn, what would you say, as a

minimum, was the depreciated of all personal property in 1066
Virginia in June, 1863, as compared with January, 1861?

A. Leaving out cotton and tobacco, I would say that it was nearly 75%. Carriages and wagons were almost all worn out; broken down. All farming utensils were pretty well worn out. There was very little demand for them. Men did not cultivate more than one-half or two-thirds of the acreage that he had done before. They had no new implements, and all the carriages and farming utensils were almost worn out.

Q. 38. How did the conditions then existing affect the agricultural business of the State as to its profitableness?

A. I was more familiar with the crops along the James River and this section around Richmond, and that down in North Carolina, and I don't suppose that the crops made in 1863 were on the whole more than one-half of what they had been years before. I know that was certainly the case with wheat. I was brought down in September, 1863, and put in charge of these mills. The grain wheat was brought to the mill and it was ground, and we paid the owners of the mill a percentage for grinding it. The balance went to the Confederate government. Very soon after I came I was called on for an estimate of what I thought the wheat crop in Virginia was, and how long it would last, and I remember I made up an estimate that at the then amount of requisitions, the wheat crop would not last until the 15th of December of that year, and that 1067
other means of providing for the men would have to be resorted to. We then went to work and from that time on to the close of the War, the Confederate Army was fed on corn meal ground from corn brought from Southwest Georgia. Sometimes the trains wouldn't come in here until during the night, and I would grind it up during the night and it was issued to the Army for breakfast in the morning. Sometimes it didn't come in and I would have to go around to the Quartermaster's for corn and get him to let me have it. As a matter of fact, from September, 1863, to the end of the War, I never had three days supply of breadstuff on hand at any time for the Army.

Q. 39. Were you in charge of that branch of the Commissary Department at that time?

A. Of the breadstuffs that were used by the Army and hospitals.

Q. 40. What would you say, as a minimum, was the depreciation of all the personal property in Virginia, in June, 1863, upon the basis of any sort of sound money? What was the per cent. of the depreciation in June, 1863, as compared with January, 1861?

A. Not less than 50%. There had been no repairs made to furniture. All the mechanics were in the Army. If a bed broke down,

a man had to fix it the best way he could. The same way with all the farming utensils and everything else.

Q. 41. In that estimate do you take any account of the waste, destruction, and consumption of livestock and other personal property in the portions of Virginia ravaged by the two armies?

A. I suppose by 1863 nearly one-half of the horses that were 1068
in Virginia had been killed—were used up or died in the Army. The same is true as to beef cattle, and as I say, all the other farming utensils, furniture, household effects, and everything of that sort, had deteriorated without any repairs being done.

Q. 42. Can you speak as to the value of securities, the stocks of insurance companies, manufacturing companies, and of banks and other stocks?

A. They had depreciated. I bought, I remember, $5,000.00 $50 shares of the Farmer's Bank stock, and I don't think I paid over $200.00 for it in Confederate money.

Q. 43. What was that the equivalent of in good money at that time?

A. Not more than $30.00 a share.

Q. 44. What would that stock have been worth before the War?

A. Mr. Taylor can tell better.

Q. 45. Do you remember the dividends that were regularly paid upon it before War?

A. Never less than 6%.

Q. 46. In what currency were taxes paid in June, 1862?

A. In Confederate money.

Q. 47. What was the sole measure of values at that time in transactions between the government and the people, and between man and man?

A. In Confederate money, except when there was a barter. 1069

Q. 48. How was gold and silver disposed of at that time?

A. Some of the brokers here had some gold that they would sell.

Q. 49. Was gold sold as a commodity just as any other commodity?

A. Yes, sir. No one called for gold unless they wanted to get across the lines.

Q. 50. From your observation and knowledge at that time, what was the condition of the people of Virginia in the territory now constituting the Commonwealth of Virginia—their financial condition?

A. A large proportion was abject poverty.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant or germane to the issues in this cause, and for other reasons apparent in said questions and answers; and

without waiving said exception, proceeds to cross examine Major Philip A. Wellford.

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. In June, 1860, or during the assessment month of 1863, what was the value of horses, cows, hogs, etc., in Confederate money? 1070

A. I can't give any reliable answer to that. I was in the Army at the time that assessment was made.

XQ. 2. Don't you know what horses sold for in Confederate money at that time?

A. Well, as I said a little while ago, it depended upon the necessity. I bought in April or May a very fine horse, a little old—I gave $300.00 in Confederate money for it. I bought it from a person who was anxious to sell.

XQ. 3. From your information as to what other people said as to the value of horses and cattle, what would you say was the value in Confederate money?

A. In the Army we didn't bother ourselves much about the price of anything outside of just what we wanted right then and there.

XQ. 4. Did you have any experience as to the value of them when you were here in charge of the mills?

A. Very little.

XQ. 5. When did you first come here to take charge of the mills?

A. It was in September, 1863. It was just two or three days before the battle of Mine Run. I will say that all the teams for the mill were bought by the owners of the mill.

XQ. 5. When did you first start to use Confederate money?

A. Very soon after the War commenced. The first payment that I received in Confederate money as a soldier was at Valley Mountain in August, 1861. 1071

Redirect Examination.

By the Attorney-General of Virginia:

Q. 1. State any experience that you had in your official capacity in regard to any transactions during the War which would have any bearing upon this investigation.

A. As evidence of how complete the country was stripped of everything, I will say that in the Army I very frequently was sent off to try to beg, borrow, buy, and impress provisions for the Brigade, and I very rarely succeeded in getting any. Then on two occasions while I was here in Richmond the railroads were cut and the provisions come from the South were interrupted, and I was sent on

horseback up along the James River & Kanawha Canal to see all the farmers to tell them the situation we were in in Richmond, and to beg, borrow, buy, or impress any meat or corn, and I got very little. The whole country was completely stripped.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant or germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said exception, proceeds to re-cross examine Major Philip A. Wellford.

Re-Cross Examination. 1072

By the Attorney-General of West Virginia:

Q. 1. In purchasing this corn and meat, in what currency was it paid for?

A. Confederate money.

Q. 2. What was the value of the corn and meat?

A. The government had a scale of prices that it fixed, and I wasn't authorized to go beyond that. If they didn't take that price I impressed it.

Q. 3. What was that scale?

A. I forget now. Flour I know was $37.50 a barrel. It was readily sold on the streets here in Richmond for from $75.00 to $100.00 a barrel.

Q. 4. How about your meat?

A. I really forget what the meat was.

Q. 5. Did you purchase any live-stock?

A. No, sir.

By Mr. Moon:

Q. You didn't have charge of the meat department?

A. No, sir. I was just sent out to ask the farmers to help us, and I took it forcibly if they didn't sell at the price fixed.

The signature of the witness is waived by consent.

MR. WILLIAM G. TAYLOR, 1073
being duly sworn, deposes and says as follows:

By Mr. John B. Moon:

Q. 1. What is your age, Mr. Taylor?

A. 73 in March.

Q. 2. Where were you during the War from 1861 to 1865?

A. Most of the time in and around Richmond.

Q. 3. What business and occupation were you in—what was your occupation at that time?

A. In the early part of the War I was connected with a bank—had charge of the Traders Bank at Richmond, and up to the latter part of the year 1862 I had charge of the effects of the bank, that is carried on the business here and then carried the effects away when the raids were made around Richmond where there was supposed to be any danger. In the latter part of 1862 I associated myself with Mr. Isaacs in the broker's business, under the firm of Williams, Isaacs & Company, and afterwards Isaacs, Taylor & Williams.

Q. 4. Did you have any other occupation?

A. Yes, sir. Then I became subject to the orders of the Secretary of War and General Lee as a scout to follow up these raids around Richmond.

Q. 5. You were connected with the Confederate Army?

A. I was connected with it in that way, but not in any official capacity. They would call on me and I would go for a week at a time, and then I was called upon at times to aid them in the Treasury department. They were converting gold into Confederate money—the gold that they would borrow from banks—a 1074
good deal of the time I was taken there. So in all I was rather in an anonymous position—first in the Army, then at my office, and then there. And when there was a raid around Richmond—a fight around Richmond—I would go to the front, and my time was pretty much occupied in that way.

Q. 6. What was the currency used in what is now the State of Virginia—in the Confederate lines—in 1863 what kind of money was used?

A. Confederate money.

Q. 7. Any other kind of money?

A. None at all except these little shinplasters used as change.

Q. 8. They went as Confederate money?

A. Yes, sir. These market men would use them sometimes. They didn't go outside of the State.

Q. 9. They were payable in Confederate money?

A. Yes, sir.

Q. 10. Was that the only kind of money used in dealings between man and man?

A. Yes, sir, except the City of Richmond issued notes payable in Confederate money and receivable in taxes.

Q. 11. In what kind of money were taxes assessed and paid at that time—in 1863?

A. Confederate money. These things that I speak of would not be received in payment of taxes—I mean these little shinplasters. The treasury department would not receive anything except Confederate money, nor would the banks. They were just sim- 1075
ply used for the purpose of convenience. Sometimes these large foundries issued tickets for the time being instead of paying currency. A little due bill or something of that sort for the purpose of making change, there being no gold or silver in circulation.

Q. 12. Will you state whether there was an increase or diminution in the actual value of the personal property in what is now the State of Virginia, between January 1, 1861, and June, 1863, and if so, what it was?

A. Well, I suppose the depreciation was 50% to 75 per cent. on personal property generally, except such things as were absolutely in demand, like horses and provisions, and things that you would have to have. In other words, you could take $1.00 in gold and buy two or three times as much by converting it into Confederate money as you could prior to the War.

Q. 13. What was the value of land in June, 1863, as compared with what it was worth in January, 1861?

A. Well, my impression was this in regard to that—I thought that land was the cheapest thing on the market, and had often thought about investing, but the question in my mind was in buying it whether I would have anything after the War, whether that would not be confiscated—that had some weight with me. If I purchased it, whether it would not be taken from me afterwards. Lands were very cheap—real estate as compared to what it was before the War.

Q. 14. What would you say was the percentage of diminution in value?

A. I can't say, except that I recollect one or two pieces of 1076
property that were sold. As to the date I can't tell you. Now, I remember one little piece of property fronting my place where I reside now. This Irishman came in. I was in the broker's business, buying and selling gold and silver. My recollection is that he had $60.00 in silver—certainly not over $70.00. He asked me to know whether I would advise him to sell it or not. Seemed to come to me as a friend. I asked him if he owned a residence. He said no, but there was a place he would like to own. He told me what he could get it for. I found out that this amount of money that he had, converted into Confederate money, would buy it, and I advised him to buy the property; that I would give him enough money for that to buy this property. They own that property to-day. I suppose that property ought to have been worth $500.00 in good times before the War—the land and the house. I think the property would have been cheap at that. It was just out of town here, and I think it

contained about two acres. It looks about the size of a square in town; but that, of course, may have been just an individual case. I do not say that everything had depreciated in that territory. Then I remember Mr. Haxsall selling a piece of property up here on Franklin Street. My recollection is that he got $40,000.00 for it in Confederate money.

Q. 15. What house was it?

A. That brown stone house on Franklin Street. I suppose it is worth that much now in good money. I suppose it cost him that much. 1077

Q. 16. What Haxsall was that?

A. I think William Henry Haxsall. A year or two afterwards he bought it back again, and had to advance $10,000.00, I think, to get off from buying it. I don't say positively that those were the figures. Just what I heard. I thought then he was making a mistake.

Q. 17. What, on the whole, would you say was the percentage of depreciation in value between January, 1861, and June, 1863—in real estate?

A. It looks to me like it was certainly 50% or 60 per cent. Of course, this is my impression. I can't remember those things accurately. I am only stating from recollection now, just what I heard. I have never talked with Mr. Haxsall about it.

There was no cross examination.

Note.—The State of West Virginia, by her Attorney-General, objects to the foregoing questions and answers, because they are not in harmony with the order of reference in this case, and not relevant and germane to the issues therein.

At 1:30 o'clock P. M. the taking of these depositions was adjourned over until to-morrow morning, June 5, 1909, at 9:30 o'clock A. M., at the same place.

The taking of these depositions is resumed this 5th day of June, 1909, at the hour 9:30 o'clock A. M., at the same place. 1078

Present on behalf of the Commonwealth of Virginia: William A. Anderson, Attorney-General of Virginia, and John B. Moon.

Present on behalf of the State of West Virginia: William G. Conley, Attorney-General of West Virginia.

MR. S. H. HAWES, 1079
being duly sworn, deposes and says as follows:

By the Attorney-General of Virginia:

Q. 1. Please state your age, residence and occupation.

A. I am 71 years old, merchant and reside in Richmond, Virginia.

Q. 2. Where were you and how were you occupied during the War from 1861 to 1865?

A. I enlisted in the Confederate Army on the 19th day of April, 1861, and served in that Army during the whole War.

Q. 3. In what parts of Virginia did you serve?

A. The first of the War I was on the Lower Peninsula—between the James and the York—under Magruder, and the second year in the battles around Richmond, and then in the Valley.

Q. 4. Where did you serve in the summer and fall of 1862, and the spring, summer and fall of 1863?

A. In the summer and fall of 1862 in the Valley of Virginia, in 1863 we scouted and fought from here to Gettysburg, all through Culpepper, near the Town of Winchester.

Q. 5. In what counties?

A. In Culpepper, Orange, Rockbridge, all through those counties. I don't remember the names.

Q. 6. Were you in the counties of Fauquier, Prince William, Fairfax, Alexander, Loudoun, or any of them, during the fall of 1862—that is during the campaign of General Lee and General Jackson against Pope?

A. Yes, sir, I was all through those counties. 1080

Q. 7. In the campaign in the spring of May and June, 1863, did you march with General Lee's Army from the neighborhood of Fredericksburg after the battle of Chancellorsville, through Northern Virginia to Gettysburg?

A. Yes, sir. I have a diary giving the whole march. I took some notes from it last night, showing some places we went by up to the fight of Gettysburg.

Q. 8. In going to and returning from Gettysburg, did you pass through the counties of Spotsylvania, Orange, Culpeper, Fauquier, Warren, Clarke, and Frederick, or any of them?

A. I did, all of those you speak of.

Q. 9. Do you remember whether you were in Prince William and Fairfax counties upon that campaign?

A. I can't remember exactly. I wouldn't like to say. As we moved about so rapidly, I hardly knew where we were.

Q. 10. How long were you camped about Richmond prior to June, 1863?

A. I can't tell you exactly, but we were here some time. After

the retreat from Williamsburg we camped around Richmond a while.

Q. 11. Please state what, within your observation and knowledge, was the condition in which the farms, forests, buildings, &c., in the regions occupied by the Federal and Confederate Armies, were left by those Armies?

A. Well, the conditions were most deplorable. I have seen hundreds of acres of splendid wood land cut down while the Armies were there, and left bare of timber. All the fences in 1081
the neighborhood were burned and the whole country ravaged. It was distressing to see it. What one Army didn't take another did.

Q. 12. What was the effect of the occupation of any portion of the country by either Army in respect to live-stock, poultry, as well as growing crops?

A. Everything was swept off. The farmers tried to hide their horses when the Army would come there, but somebody would report them and they nearly always lost their horses. The fields were pretty well swept of all forage. I know there was no respect for the farmer. I judge by what we did with our artillery horses. Whenever we found forage, we would turn our horses in, and the other Army did the same thing. Had to do it.

Q. 13. Turned their horses in on the growing crops?

A. Yes, sir—well, I will take that back—turned them in on the timothy fields and clover fields. I don't know that I ever saw any one turn them in on the growing crops, but there were not many growing crops to turn them on. In those counties that you speak of growing crops were a rarity.

Q. 14. What was the condition of the highways and highway bridges in the fall of 1862 and during the first half of 1863?

A. The highways in Virginia at best were bad, but they were terrible at that time, because two Armies were passing over them. You may say they were impassable in the Winter. I have been in the mud myself up to my knees, trying to force the artillery through. 1082

Q. 15. What command did you serve in?

A. I served in the First Regiment of Virginia Artillery.

Q. 16. What position did you hold?

A. Lieutenant.

Q. 17. Lieutenant in an Artillery company?

A. Yes, sir.

Q. 18. What was the condition of the railroads—as to their equipment, track, and roadbed—their capacity for efficiently moving crops or products of any kind?

A. Very poor. We rarely went over 12 miles an hour at full speed.

Q. 19. Is that as to passenger trains?

A. As to the trains I was on. The men would jokingly say that

they could jump off and pick blackberries and catch up with the train.

Q. 20. What was the condition of the buildings through the country?

A. Very dilapidated. No one could keep them in order.

Q. 21. What as to vehicles and farming utensils?

A. All of our people were in the War. It was home-made work and very poor. They were in bad condition. Sorry to report that, but they were.

Q. 22. To what extent were the people able to keep their buildings and utensils and vehicles in repair?

A. You know the fighting men were all in the war, and nearly all of those left at home were men of advanced years, and they were not able to look after things as they should. 1083

Q. 23. How was it as to household furniture, household effects?

A. Of course those things go to wreck when they are not repaired and they did go to wreck.

Q. 24. What in 1863 was the currency in use in the territory of the present State of Virginia—what was the measure of all values, the currency in which taxes were paid, and with reference to which all transactions were had?

A. Confederate money.

Q. 25. From your knowledge and observation, would you be prepared to state what, as a minimum, was the depreciation of the real and personal property in Virginia, occasioned by the causes to which you have referred as to June, 1863?

A. I should say about 50 per cent.

Q. 26. You would state that as a minimum?

A. Yes, sir, I think so, from my observation and knowledge of properties that were sold belonging to my own connections.

Q. 27. When I speak of the depreciation in value, I mean in actual value, taking any sound money as a standard, estimating the property of Virginia in June, 1863, and contrasting it with its value at any time prior to April, 1861—in either 1860 or 1861—what would be your estimate as to the depreciation, as a minimum—the lowest estimate that could be fairly made, of this depreciation?

A. Of course, I can't say positively, but I think what I said just now—about 50 per cent.—would cover it.

Q. 28. Is that your estimate of the depreciation of specific 1084 property then in Virginia?

A. I can't exactly understand what you mean. From my observation though, and from what I know that property sold for prior to the War, and what it sold for during the War, I think it was about 50 per cent. as well as I can remember. I heard my father speak of it. I didn't sell any myself.

Q. 29. Can you state approximately what proportion of the movable personal property in the State had been destroyed, carried off by the Armies, or consumed, in June, 1863, as compared with, say, April, 1861—as a minimum?

A. I would not like to make that estimate. I couldn't tell. I want to be as accurate as I can. Everything was in a very deplorable state, and the damage to property had been terrible. In fact, some farms had been destroyed—nothing left. Some had little. So I can't tell exactly. I wouldn't like to make any estimate.

Q. 30. Was the portion of the live-stock and personal property upon the farms in the State which were carried off, destroyed, or consumed, large or small?

A. Large. No question about that.

Note.—The state of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objections, proceeds to cross examine the witness.

Cross Examination. 1085

By the Attorney-General of West Virginia:

XQ. 1. Mr. Hawes, did you know the value of horses during the years 1862 and 1863 in Confederate money?

A. It varied very much, Mr. Conley, according to the horse; some of them $400.00, some of them $1,000.00, and some of them $1,500.00.

XQ. 2. Do you know the value of cattle during the same period?

A. No, sir.

XQ. 3. Hogs?

A. No, sir, only horses, because I had to deal with them.

XQ. 4. Do you know how much horses were assessed at during these years—on an average?

A. When an officer's horse was killed in battle, there was a board of appraisement, and according to the value of the horse he was allowed for him.

XQ. 5. I have reference, however, to the assessment made by the assessors of personal property in the various counties throughout the State of Virginia?

A. Oh, no. I don't know anything about taxes during that year. I was in the army all during the War. I don't know anything about taxes.

XQ. 6. What would you say would be the value of those horses in gold during the years 1862 and 1863?

A. I knew nothing about gold at that time. All I knew about was Confederate money. 1086

XQ. 7. Was Dinwiddie County an average county of this State during that period, as to property, according to your best judgment?

A. Dinwiddie county wasn't damaged as much as the other counties, from my point of view, during the War, because the Armies didn't fight over there as they did in the others.

XQ. 8. I note from the original assessment list of Dinwiddie County for the year 1863, that the total number of horses, mules, asses, and genets were 2,202, and that the total assessed value thereof was $211,290.00. I would like for you to state what the average assessment was for that county for the year 1863?

A. I don't know anything about the assessment of property there. I only speak of my knowledge of what happened to me during the War. It is a matter of fact, however, that I don't understand the assessments in the counties. Assessments in the counties are very remarkable things. How in the world they can have the conscience to put things down so low, has always been a mystery to me. I might say the same of personal property in the cities; but I know very well that they never assess things in the counties at the proper value. I know that.

XQ. 9. I hand you the original assessment list for that county for the year 1863 to verify the figures I have given you.

A. I haven't any doubt about that. I don't think they know what they are doing when they assessed them. Somebody must know, but I don't understand it. 1087

XQ. 10. Now, Mr. Hawes, isn't it a fact that the average assessment for that year in that county was, in round numbers, $95 a head?

A. You mean according to these figures. It looks that way.

XQ. 11. To be exact $95.95.

A. It looks like about $100.00 in round numbers. I know nothing in world about that. The mode of assessment in counties is past finding out for an ordinary layman.

XQ. 12. In the same county, and for the same year, there was assessed 6,662 cattle at a total assessed valuation of $92,441.00?

A. Well, as I told you a while ago, when you asked me about cattle, I know nothing about cattle—whether that assessment is right or wrong.

XQ. 13. It would average about $13.87 a head, would it not, according to the figures I have given you as shown by the original book of asessment?

A. I don't know anything about the value of cattle, if you ask me

to say whether I think that is a proper valuation or not. I know nothing in the world about it.

Redirect Examination.

By the Attorney-General of Virginia:

Q. 1. That assessment referred to in the question just propounded to you embraces all the cattle and all the horses in Dinwiddie County—good, bad and indifferent—colts, and old broken down horses, as well as any good horses that might have been left in the county, and so far as to the cattle, it embraces evidently all of the cattle in the county, including calves, old cows—as a 1087½ rule can you say whether much of the best stock was left on the farms—whether the best horses and the best cattle, and all of the beef cattle generally, were not carried off or consumed?

A. They were taken off, no doubt about that.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objections, proceeds to recross-examine the witness.

Recross Examination.

By the Attorney-General of West Virginia:

XQ. 1. I will ask you to take the original assessment list for Dinwiddie County and look in Column "42 under the head of the number of horses, &c., together with the assessed value, immediately following, and say whether the average in the columns you examine is below $100.00, and what the highest assessment of any one animal is, together with the lowest assessment of any one animal?

A. Mr. Conley, I told you just now that the assessed values in counties was past my understanding, and I know they are usually wrong; and yet why they allow them to assess that 1088 way I do not understand. This is, it seems to me, a mighty low assessment for horses. They nearly always do assess them low. Now, here are two horses at $50, and yet they may have been very poor in 1863. I expect it was miserable stock that those farmers had, because the best horses were taken by the cavalry and artillery for the War, and the rest that were left were very shaky, I expect; but giving them the benefit of the doubt, I would say that the assessment is fair, but I know nothing about that. Here are four for $150 each. There are three items of horses at $150 each. They may

have been young horses. It is all guess work. I don't know anything about that.

XQ. 2. The assessments made at all times take in the good, bad, and indifferent, do they not?

A. Are supposed to, yes, sir.

Signature of the witness is waived by consent.

MR. CHARLES U. WILLIAMS, 1089
being duly sworn, deposes and says, as follows:

By Mr. John B. Moon:

Q. 1. Mr. Williams, what is your age, residence and occupation?

A. I am nearly 59 years old, and my occupation now is a farmer. I have been a lawyer for 41 years, and I have resided in Richmond all my life—within a mile of it. Now I am about 5 miles out, but I hardly consider that my permanent residence. I still have a town house that I rent out while living in the country.

Q. 2. Where were you and what were you engaged in during the War from 1861 to 1865?

A. I went to Harpers Ferry on the 17th of April. I belonged to a battalion of students at the University of Virginia. We went to Harpers Ferry. Took a train to Manassas and then down to Strasburg, and marched from Strasburg to Winchester, thence by rail. After about ten days Governor Letcher ordered us back to the University and refused to permit us to be mustered in as a battalion, and we disbanded at Harpers Ferry, and I went to Winchester and staid for a day or two with a cousin of mine, Phil Williams, and then he drove me in his buggy to Staunton, and then I came back to Richmond. I then went into Richmond Howitzers, and went to Yorktown. I was engaged in drilling artillery during my whole stay at Yorktown. I staid there until the 10th day of February following—1862. I was then ordered to Richmond and assigned as drill master of artillery at the camp out here, and remained there until
July. I then was appointed on the Staff of Major-General 1090
Leigh R. Jones in 1862, and went with him through the first Maryland campaign. I marched from Richmond all the way to Gordonsville, acting as Adjutant for the artillery battalion—was temporarily assigned to that—and after that marched with the Army to overtake Jackson, and went through Northern Virginia into Maryland. I came back from Maryland and staid a couple of days with Mr. Phil Williams in Winchester, and I rode in a stage from there to Staunton, and then came to Richmond; I came as special

messenger to Mrs. Jones to inform her that her husband had been retired from the Army on account of a probably fatal trouble with his heart. This was in December, 1862, and he died in January, 1863. I went back to the Army after I had found that his death was inevitable. I had done the work that he wanted me to do. He was in bed and I went there every morning and spent several hours writing for him. I returned to the Army about the last week in December, 1862, and went on the Staff of General Corps of Pickett's Division, and remained with him until the close of the War, the last year of which I was his Assistant Adjutant and Inspector General.

Q. 3. This was all in the present State of Virginia except when you went into Maryland?

A. Yes, sir. We crossed at Shepherdstown in returning from Maryland, marched through Martinsburg, and then we came down by way of Bunker Hill.

Q. 4. What was the state of the country and what was the effect upon the country of the occupation by the army and of the existence of the war, in regard to improvements on lands, 1091
and the cultivation of lands, and the condition of personal property on the lands—stock or other personalty?

A. There was a constant state of depreciation. When I was in the valley in April, 1861, it was the garden spot of the earth. Every thing was beautiful, well tilled, and as well cultivated as could be. It was full of fine crops and fine stock. My next trip through the valley was in September, 1862, and the depreciation was very marked in every respect.

Q. 5. Taking the whole of the present State of Virginia what portion of deterioration, in your judgment, was there in actual value of the lands, from January 1, 1861, to June, 1863? What percentage of actual depreciation in the value of lands?

A. Well, the Confederate money at the beginning of the war was practically as good as greenbacks. By 1863 they had become very much depreciated, and the Confederate Government cut off 33⅓ per cent of its treasury notes, thinking, thereby, to enhance the value of the rest, but which had a much more natural effect of rendering the rest almost valueless. The 66⅔, instead of being worth as much as the old currency had been at par, was less than the 66⅔ before it was cut off, and the depreciation was much more rapid from that time on. But the value of land depends upon the employment of personal property upon it, and the personal property was scattered. The horses had been taken, the cattle had been eaten up, and the negroes were, many of them, working on public works. They were carried from Orange and Culpeper counties down to 1092
the Peninsula to throw up the fortifications there. They threw up all these fortifications around Richmond here, so that the farm-

ing operations were very much upset. And then the crops were so often trampled upon and destroyed by the army that the farmers were discouraged, and then a large number of the negroes were sent away. I know of a good many sent to Florida and North Carolina. In my own family there were several hundred sent to Florida, and I know of over 100 being sent by old Mr. George Pendle to North Carolina. I think old Sam Harriston sent over 500 south during the War. All these things tended to destroy the value of land because they could make no profitable use of it, and the farm products in the State were decreasing every day, and this had advanced very far, by June, 1863. There became such scarcity of forage and everything of that sort, that the Confederate Government exempted from service a number of men and appointed them to stay on the farms and work. I recollect that Mr. R. S. Allen, of Tuckahoe, was appointed to stay on the farm and keep his farm going for the benefit of the Confederate Army.

Q. 6. Well, what proportion of diminution was there in the value of the lands from this cause?

A. Well, I can give you a personal example—my father had a place near Richmond that would have brought $50,000 in 1860, that sold after the war for $11,500.

Q. 7. I mean between the dates of 1861 and 1863, as mentioned above?

A. Well, you take the sales that were made at that time, of course they were made in depreciated currency and they look better than they really were. If you take the sales that were made in Confederate money in 1863, there would probably have been three times as much Confederate money paid for property as would have been paid for the same property in 1861. That is in the cities. In the country the depreciation was more, because it was very hard to sell any land except to men who were making money and who wanted to get rid of the Confederate money and bought largely of lands. But they were selected lands, like that farm of Dr. Welford's on the Rappahanock River, and like Mr. Jerry Morton's place in Orange County. That was sold in Confederate money for a pretty large sum. But the farm was worth in 1860 about $50,000. I think it sold for $300,000. But that was an exceptional transaction. It was a valuable farm, as the Welford farm, but you take the average lands in Virginia, they were not worth 25 per cent of their value in 1860 in good money. 1093

Q. 8. Between those same dates of January 1, 1861, and June, 1863, what was the depreciation, if any, in the amount and value of the personal property in the State, according to your best judgment?

A. I should say that the estimate which Major Hunter gave of 50 per cent, was too high. I think it was less than fifty per cent.

He told you that he would put it at 50 per cent as a minimum. I think even that is too much.

Q. 9. The personal property in the State had diminished more than 50 per cent?

A. Oh, yes, sir. It had disappeared everywhere pretty large- 1094
ly. We had lost enormously in negro property, by the Northern Army taking them and sending them to the rear.

Note: The State of West Virginia, by her Attorney General, objects to each and all the foregoing questions, and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney General of West Virginia.

XQ. 1. Mr. Williams, the depreciation in property you have just described was brought about mainly by a greatly depreciated currency, was it not?

A. No, I meant that it was destroyed. You know the State of Virginia had already furnished most of the horses and most of the cattle for the Confederate Army. The Southern States were too far off, and we needed our transportation for freight and men. So that very little live stock was brought here from any other State until the close of the war, when it had given out here practically, and we had to bring it from other States. We were foraging cattle in North Carolina in January and February, 1865.

XQ. 2. You have stated that at the beginning of the is- 1095
suing of Confederate money, which I believe was in 1861, it was at par?

A. It was about the same value as the United States greenbacks, but it depreciated steadily.

XQ. 3. What was its value in 1863?

A. The depreciation had advanced pretty far before the 1st of April, 1863, and then when we repudiated one-third of the currency it went much more rapidly. The fact is the credit of the Government was gone at that time. That book (referring to Matthews' Forms, p. 308) will give you the depreciation in January, 1863, three for one, February, four for one; March, five for one; April, five and one-half for one; May, five and one-half to five and three fourths for one; June, seven and one-half to eight for one; July, nine for one; August, twelve and one-half to thirteen for one; September, thirteen

for one; October, fourteen for one; November, fifteen to seventeen for one; December eighteen to twenty for one.

XQ. 4. How was it in 1861?

A. In 1861—May 1, 10 for 1, up to October, then it was 1.12 to 1.15 for 1; November, 1.15 for 1; December 1.20 for 1.

XQ. 5. In other words you paid $1.20 for a dollar in good money in December?

A. At that time the bank notes that were in circulation were considered pretty good money up until about 1863 or 1862.

Redirect Examination.

By Mr. Moon:

Q. 1. In 1863 what was the currency of the country here, the currency in which taxes were assessed and paid, and transactions of all kind had? 1096

A. The only currency in use was Confederate Treasury notes and State bank notes, but public confidence was a little stronger in State bank notes, and the people who got them in their possession kept them and paid out Confederate Treasury notes. One enormous loss to the State in the value of personal property was that the entire capital and assets of the banks in the State when the war broke out was in gold and silver and bank notes, which all drifted into Confederate money later, most of the gold and silver having drifted into the Confederate treasury.

Q. 2. What currency was the measure of value in 1863?

A. Confederate currency. The bank notes were for a long time at a premium but they became finally as worthless as Confederate money. There was practically no circulation except the Confederate notes. People held the bank notes because they did not want to part with them. They finally became worthless. But the Confederate currency was the only currency in use. If a man wanted to go abroad he found it very difficult to get gold and silver. He had to buy it at a premium. There was very little of it for sale.

Q. 3. Confederate money, then, as I understand it, was the basis upon which taxes were assessed and paid?

A. Yes, sir.

Q. 4. In which all transactions were conducted? 1097

A. Yes, sir. If you offered a man $500 for a horse it was understood that that was Confederate money. However it was a mighty poor horse you could get for $500 in 1863—

Q. 5. In other words, $1 meant $1 in Confederate money.

A. That was all, sir.

Q. 6. Can you state what effect the causes you have mentioned had upon the value of stocks and other securities in the Common-

wealth—bank stocks, stocks of insurance companies, manufacturing companies, and bonds of corporations, and other like properties?

A. Bank stocks, and the stock of other corporations, including railways, were constantly depreciating, and were finally entirely wiped out—banks, railroads, insurance companies, and everything else. There wasn't a share of any manufacturing or industrial corporation, or any other corporation in Virginia worth a dollar.

Note: The State of West Virginia; by her Attorney General, objects to each and all of the foregoing questions on redirect examination, and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers.

Signature of the witness is waived by consent.

CAPTAIN W. GORDON McCABE,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. Captain McCabe, will you please state your age, and where you reside?

A. I am 67 years of age and live in Richmond.

Q. Please state where you were during the war between 1098 the States, and what opportunity you had for obtaining knowledge and information as to the condition of the farms, forests, fences, buildings, and lands generally in Virginia, and particularly in those portions of Virginia which were occupied either by the Federal or the Confederate Armies?

A. I believe I have slept in every man's cornfield in Virginia. I first went out with a company from the University when I was a lad at College, marched up the valley to seize Harpers' Ferry. We got all we wanted, and we wanted a good deal. I then came back to college, packed up my things and paid my debts. Then I enlisted in the Richmond Howitzers and served in the Army of the Peninsula. That was in 1861. And there is where I first commenced to see the devastation. I had been prepared for college at the Hampton Academy, and my sister lived there. That was one of the most flourishing places in Virginia. In the first place Magruder issued an order that the people must get out. The Yankees had advanced from Fortress Monroe, and had several times occupied the town of Hampton. He took up the idea that Hampton would be

a most valuable place for them to put their troops in winter quarters, and determined to burn it. We burned everything 1099
in that town except the old church and the Whiting house and the old Hudgins house, and all those people were fugitives. That was a very rich country for trucking. They used to do a great deal of trucking. All that country was just wiped off. All those people had come up here to Richmond. Poor! Why, my sister who kept her horses and carriage, and had everything that a lady could have in those days—she had two children, she had a negro girl,—why she had to do her own cooking. Nobody had any idea how those poor children were.

Q. 3. What was the condition and effect of the occupation of the country by the two armies, upon the fences, forests and fields?

A. Well, in the Peninsula it was devastation. In 1862, after the battles around Richmond, I went into Charles City, New Kent, King William's County, and the next year in the Chancellorsville Campaign I was all up through Orange, Green, Madison—all through Northern Virginia. There were practically no roads at all. We used to drive our guns where we pleased. If we would go in the road they would go up to the hub, you know.

Q. 4. How were the fences in Northern Virginia?

A. They were down.

Q. 5. Did you go with the army through Northern Virginia on the Campaign of 1862?

A. No, sir. Now, in 1863, after the Chancellorsville Campaign, I was ordered to report to the Secretary of War in Richmond, who told me that he understood I had been a student of ordnance and gunnery. A man named Foote from Tennessee had of- 1100
fered them a breech loading gun that was going to do wonders. He ordered me to take a section of those guns to Charleston, South Carolina, where I used them against the enemies' gunboats from James Island. The guns didn't come for some time. I served in Fort Sumpter until that was knocked to pieces. Then I served in Battery Wagner, until it was evacuated.

Q. 6. When did you return to Virginia?

A. I came back that autumn and joined my battalion, and from the Wilderness down, I served through all the campaigns. I was at Appomattox Court House.

Q. 7. Can you mention any transaction or sales which came within your observation or knowledge, of real estate in 1863, which would illustrate the depreciation in the value of such property; if so, please state it.

A. Well, I lived at Westover, which was one of the show places on James River. It was one of the model plantations on the river, with 1,200 acres of land. It had splendid barns on it. Mr. John

Selden, who owned it, was known as one of the best farmers in Virginia. He had a very large family. Westover was built by William Byrd II, who was the most cultured man in the western world of his day, the greatest wit. Had been educated in England. Studied in the Inner Temple. Also educated in France. He was a fellow of royal society. He spared no expense in building Westover. He went to Italy and had the chimney pieces for Westover carved by Italian sculptors and sent to this country. He was a man of enormous wealth. Westover was perfectly kept up before the war. 1101
I lived there in 1858 and 1859—two years. In 1859 John Selden was offered by Mr. Beirn $75,000 in good money for Westover.

Q. Did he accept it?

A. No, sir, he refused it. What did he want to sell Westover for. In 1862 when McClellans army fell back on Harrison's landing after the battle of Malvern Hill, Fitz-John Porter's Horse occupied Westover. While Fitz-John Porter did what he could, they absolutely destroyed everything on that place. They stole the mantle pieces out of the house and sent them to New York. I have been called upon since the war to make a drawing of the mantle piece in the drawing room, and the present owner has had a replica made of it and it is there now. They destroyed everything. Poor old Selden was broken in spirit by living in refuge and poverty and he sold Westover to Major Drury in 1863 for $60,000 in Confederate money, which he put in Confederate cotton bonds and they became worthless.

Q. 9. Do you know what month it was in 1863?

A. No, I do not. I only know that it was in 1863. I can't, of course, tell about that. It is just a matter of memory anyway.

I recall another sale—this is to the best of my knowledge and belief. My father-in-law was a rich man—Mr. Edmund Osborne of Petersburg. His brother was a rich man too. Mr. Osborne had a great deal of money and Judge Gholson was a great friend of his. Dr. Osborne urged his brother, Mr. Edmund, to buy Judge Gholson's place. Judge Gholson had most of his money in England, and Judge Gholson told him he would sell it to him for $100,000 in Confederate money. And the old man believed that the 1102
cause was going to win and he told him that he wouldn't give it to him, the place wasn't worth it. He sold that place for $25,000 in 1865 and was glad to get it.

Q. 10. What was the condition of the farming interests of Tidewater, Virginia, particularly on the Peninsula, in 1863?

A. Well, it was a scene of desolation. The fences were down. The enemy would send raiding parties up from Newport News, where they had a strong base, as well as from Fortress Monroe, and

what they couldn't steal they would destroy, and there were no improvements or repairs.

Q. 11. What was the condition of the country in the region around Norfolk in 1863?

A. I can't tell you anything about it, I wasn't there.

Q. 12. Norfolk was occupied by the Federal troops.

A. Of course, it was. But I do not know what the condition was all through Culpepper, Orange, and the country all down through there. The roads were quagmires. They would take the fences and make fires out of them. The roads made a great impression on me—much more than they would on an infantry officer—because I was an artillery officer.

Q. 13. What was the condition of the highway bridges of Northern Virginia, in the Peninsula and in the valley—the country with which you were familiar—in 1863?

A. You know as well as I do about that. You know what they did. I can only repeat what everybody knows. They were in a very bad condition. Of course they were very bad. But 1103 you must remember that we had an engineer corps, and we would bring up the engineers when we couldn't pull the guns over, and they would fix them the best they could. Everything was going to the devil—that is the plain English of it.

Q. 14. What was the effect of the operations of the two armies upon the supply of live stock in the regions through which the armies marched?

A. There wasn't any. The live stock was swept away.

Q. 15. What was the financial condition of the people of Virginia generally in 1863?

A. Well, I can't speak of the people of Virginia generally. All I know were dead poor. But nobody thought about money. Nobody had any money. It wasn't considered very genteel to have money. It wasn't very respectable to have money.

Q. 16. What was the condition of the railroads in Confederate Virginia in 1863?

A. Everything was run down. You know the rails were built, some of them, with scrap iron. I can't remember ever having been in a passenger car when I used to come down and go away. I used to ride in box cars pretty much all the time. When the troops were moved we always travelled in box cars or on flats. The trains were never on time and were always running off the track.

Note: The State of West Virginia, by her Attorney General, objects to the foregoing questions and answers, for the reason that they are not responsive to the or- 1104

der of reference, and for other reasons apparent on the face of said questions and answers.

Signature of witness is waived by consent.

STATE OF VIRGINIA,
City of Richmond, to-wit:

I, T. Gray Haddon, a notary public in and for the City of Richmond, and State of Virginia, do hereby certify that the foregoing depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Phillip A. Wellford, William G. Taylor, S. H. Hawes, Charles G. Williams, and W. Gordon McCabe, were taken before me at the times and place therein set out; and I further certify that each of said witnesses was duly sworn.

Given under my hand and official seal this, the 15th day of June, 1909.

(Seal) T. GRAY HADDON,
Notary Public in and for the City of Richmond and State of Virginia.

DEPOSITIONS OF GEORGE W. ATKINSON ON BEHALF OF THE DEFENDANT.

Deposition of George W. Atkinson, taken by the State of West Virginia, to be filed and read as evidence in her behalf in the cause of the Commonwealth of Virginia against the State of West Virginia, pending in the Supreme Court of the United States, which deposition is taken by the consent of the parties on the 14th day of July, 1909, at the law office of Mollohan, McClintic and Matthews in the City of Charleston, County of Kanawha and State of West Virginia. 1

Present on behalf of the defendant, the State of West Virginia: George W. McClintic, of counsel.

Present on behalf of the plaintiff, the Commonwealth of Virginia: John B. Lightfoot, Jr., by appointment of William A. Anderson, Attorney-General of Virginia.

JUDGE GEORGE W. ATKINSON,

a witness of lawful age, being first duly sworn, deposes as follows, to-wit:

(Direct examination, conducted by George W. McClintic, Esq.)

Q. State your age, residence and present occupation.

A. I was sixty-four years old a few days ago; my legal residence is Charleston, Kanawha County, West Virginia; my present official residence is Washington, D. C.; Associate Judge of the United States Court of Claims.

Q. What other official positions under the Government of the United States have you held, if any?

A. I was four years United States Marshal and nearly four years United States District Attorney; and a member of Congress at one time.

Q. What official position did you hold, if any, under the 2
Government of the State of West Virginia?

A. I was four years Governor of this State, from March 4, 1897, to March 3, 1901, inclusive.

Q. In what county in West Virginia were you born and raised?

A. Kanawha County.

Q. In what county in West Virginia were you living from the year 1861 to 1865?

A. In Kanawha County.

Q. What official position, if any, did your father, James Atkinson, hold during the period from 1861 to 1863, previous to the formation of the State of West Virginia in 1863?

A. Sheriff of Kanawha County.

Q. In what parts of what is now the State of West Virginia were you familiar—with what parts were you familiar from the year 1861 to June 20, 1863?

A. Kanawha County, Fayette, Nicholas, one or two trips to Greenbrier County, also Jackson and Roane Counties. I was also in Putnam and Mason a time or two.

Q. Was the section of West Virginia with which you were familiar overrun by the armies either of the Confederate or Union side?

A. By both, at times. The section of the state I have mentioned with which I was familiar during that period was most overrun, I think, by home guards of both armies. The Confederate army occupied Charleston at the beginning of the War and soon thereafter was driven from this valley by Federal forces under the command of General J. D. Cox, of Ohio troops. This section, if I re-
member correctly, remained under the control of the Federal 3
army until September, 1862, when the Confederates entered

the valley from the east and drove the Federal forces under the command of General Lightburn across the Ohio River into the State of Ohio.

Q. You spoke of home guards; please explain what you mean by home guards, and what was their usual occupation, on each side?

A. The home guards were composed of militiamen principally under the command of captains, and participated as parts of both armies. Their principal occupation, we used to think during the War, was that of stealing and marauding. The Union home guards pursued the Confederate citizens or those who sympathized with the Confederacy, and vice versa; so that the marauding was pretty general all through these counties during that period; and I remember distinctly that our citizens feared them much worse than they did the army on either side so far as maintaining and protecting their property was concerned.

Q. Was it not a fact that these home guards often took the lives of opponents without any pretense of trial or otherwise?

A. Unquestionably so, on both sides. It was a common occurrence to hear of men being killed all around these adjacent counties, first by Union home guards and also by Confederate home guards.

Q. What was the condition of this section spoken of by you as to security of property during the period from the beginning of the War to the 20th day of June, 1863, and thereabouts? 4

A. There was practically no security of property at all, either of Union people or of Confederate people.

Q. What effect did this state of affairs have upon the value of property, both real and personal, during that period?

A. It necessarily materially reduced the values of all kinds of property all through this region of country.

Q. What proportion of able-bodied men of soldier age were in the two armies from this section of the country, in your opinion?

A. I am quite sure a decided majority of the men of both sides went into one army or the other. I could hardly say with any degree of exactness as to the proportion, but I should say anywhere from sixty-five to seventy-five per cent. of able-bodied men, middle-aged and young men, volunteered on both sides during that period.

Q. State any specific instance of which you may know that the Confederate army took the property of Union sympathizers and confiscated the same during this period?

A. When General Loring came into this section, the leading or prominent men of the Union side left this section in advance of General Lightburn's retreating force, and remained in Ohio until the Federal troops returned to Charleston. The rule, as I understood it then, was for the Confederates to prey off the property of

the Yankee sympathizers; and I can recollect one particular instance of their taking property away, and that was from the dry goods and grocery store owned by my father and Greenberry Slack. They had a right good sized store of goods here in Charleston, and General Loring's forces took it all. They, however, offered to pay for it in Confederate money, but very little or a comparatively small part of it was taken in comparison with the value of the goods, because it was worthless money; so it was on the whole a practical taking. I am quite sure other people here lost property the same way, but I do not recollect any particular instance now.

Q. Do you remember the condition of the roads and bridges in this section of the State of West Virginia at that time, up to the 20th of June, 1863, or thereabouts?

A. My recollection is that practically all of the bridges, if not all of them, were destroyed by one side or the other. I know that General Lightburn destroyed the wire suspension bridge across Elk River after crossing it to prevent the Confederates from pursuing him. I also remember distinctly that the bridge across Coal River was destroyed, but I cannot recollect which army did that job, or whether it was before or after General Loring's entrance into this valley in the fall of the year 1862.

Q. Was there much emigration from this section of the valley with which you were acquainted during the period from 1861 to 1863 by people going to Ohio as Union men or to Dixey or the South as Confederate sympathizers?

A. A very large proportion of our population went West and South, Union people going towards Ohio and into Ohio and the Confederates southward, principally to Virginia. There were times from 1861 to 1863 when there were very few able-bodied men in all this section, round about Charleston.

Q. Do you remember whether or not there was talk or scare of confiscation of property by either Union people or by Confederate people according as to the one who should win, during the period of which we have been speaking?

A. That feeling existed to a very great extent from the beginning to the close of the Civil War, as no one seemed to know then, or at least during the first half of the War which side was going to win. I have always regarded the battle of Gettysburg the decisive battle of the War; and after that event the Union people were quite confident of success. Prior to that time no one knew what the result would be, and there was a great fear of confiscation of property on both sides.

Cross Examination.

By Mr. Lightfoot:

Q. Judge, when the War broke out in the year 1861, you were, I believe, according to your statement of your present age, about fifteen or sixteen years old.

A. Yes, sir.

Q. Were you actively enlisted in the army?

A. I was not.

Q. Your observations or events in the counties and districts you have mentioned were obtained principally by the casual visits which you might have made from one county to another and not as a soldier with the armies? 7

A. That is correct.

Q. In answer to Mr. McClintic's question whether or not the sections you have mentioned were overrun by the armies of both sides you have stated that at times they were subject to the depredations of the home guards. I take it that this answer means that the actual organized force neither of the Confederate nor of the Union army occupied this section for any lengthy period of time between 1861 and 1863; is that correct?

A. The Federal troops occupied this valley practically all the time from early in 1861, indeed, all the time from 1861 until General Loring came in in 1862 and drove them out. Then the Federal forces were reinforced, and, in a very short time after General Loring came in, returned and drove him out, and from that time until the close of the War the Federal forces occupied this entire valley.

Q. When you speak of the valley, please designate the valley to which you refer.

A. The Great Kanawha Valley.

Q. Are these facts which you state as to the occupancy of the valley by the Federal and Confederate organized forces made as a matter of historical information or from your own knowledge and information, seeing the armies there?

A. I speak principally of my own recollection. I do not recollect any return of Confederate troops in this valley after General Loring retreated from it.

Q. That was when? 8

A. 1862. I do recollect a raid made through the Ohio Valley, crossing the Kanawha in the neighborhood of its mouth that created quit a stir down in that section, but that was more confined to the Ohio Valley than the Kanawha.

Q. Who made that raid?

A. General Albert G. Jenkins.

Q. Is it not a fact, after the year 1862, with the exception of the Jenkins raid that you have mentioned and the further exception of

a raid by General William E. Jones, there was no Confederate occupation of this valley west of Greenbrier and the border counties?

A. I do not think Jones came as far west as Greenbrier county. My recollection is that his raid was up in the neighborhood of Philippi, Elkins, Grafton and that region. I do not recollect any raids of regular Confederate soldiers other than those I have mentioned; but all the while the home guards were marauding and had our people scared, terrified, practically throughout the whole of the War.

Q. Judge, the term "home guards" must have been a misnomer if the men who constituted them didn't guard the home, but on the contrary were marauders?

A. The Union home guards were intended to protect the loyal citizens and the Confederate home guards were to protect those who sympathized with the Confederacy. However, the name that followed them all through the War was that they were not much short of pirates on both sides. I do not think that the Union home guards ever stole property from the Union people—they did their capturing from the Confederates, and vice versa. 9

Q. What percentage of the personal property of the section which you have mentioned would you say was absolutely destroyed by the depredations of those home guards?

A. I could not give any correct estimate of the amount of property destroyed. That would be impossible; and personally I know very little about their destruction of property. They confined their action chiefly to capturing property and carrying it off all around Charleston in Kanawha County.

Q. What character of property?

A. Anything they could get their hands on and remove.

Q. Do you think that the extent of these depredations was sufficient to make an appreciable decrease in the total valuation of personal property in this section?

A. Unquestionably so; because no one had encouragement for the production of personal property. They managed to raise enough to live on. There was no such thing as people's producing with a view of increasing their property or their wealth. It was a matter simply of living through the pendency of the War.

Q. Judge, is it not true that the farmers had an open and ready market and sale with the Union forces, and with the markets west of them, and with their home markets, for all the products of their farms, both agricultural and live stock?

A. Yes, to a certain extent in this immediate section and along the Kanawha River while the Federal troops were in control, but the people who lived along this valley did not know what 10 day the Federal troops would be driven out; hence, they had no encouragement to produce property for sale. And my recollection

is quite distinct that very few products of any kind were raised in this section during the entire period of the War. I know this, and I know it well, that not only did the Federal Army supply itself with the necessary supplies for the support of its soldiery, but also that most of the people who lived in this town, if not all of them, got their supplies from Gallipolis, Ohio, by means of steamboats which plied this Kanawha River during that part of the War when the Federal troops were in charge.

Q. When the Federal troops supplied themselves from the farms of the people, did they not pay for the supplies which they obtained?

A. I do not recollect any instance of the Federal army buying any supplies from the farmers in this section. They might, however, have done so. But I recollect vividly the fact that hay for their horses and the bacon, beans and other supplies for the men, were shipped here on steamboats from Gallipolis, Ohio. My recollection further is that none of the farmers, certainly with my recollection, raised anything to sell to the army or to anybody else during the period of the War. My father owned a large farm five miles from Charleston on Elk River, and I am very sure he never sold a dollar's worth to anybody during the entire period of the Civil War, or I would recollect it. 11

Q. Taking the County of Kanawha, would you say that the personal property in that county during the period of the War was, in the aggregate, decreased by reason of these depredations?

A. Unquestionably and materially so.

Q. Going further west, would you say that the same is true of Jackson County?

A. In a general way, I should say yes, although I did not know so much about Jackson County as I did about Kanawha, as I lived here. Yet I often saw people from Jackson County who came to this county.

Q. Mason County?

A. It would be less in Mason County, I think.

Q. How about the Pan Handle—in the northern part of the State?

A. I do not think it was disturbed during the War in any way materially, except the time General Morgan went across the Ohio River and went over or through Ohio and was captured near Steubenville; and I have heard a great many people in Wheeling say that they were badly scared for fear General Morgan might cross into the City of Wheeling and burn the city. I speak somewhat knowingly on this point, because some eight or ten years after the War closed I moved to Wheeling and lived there for twenty years.

Q. When was that raid, Judge—approximately?

A. 'Long about 1864, I think. 12

Q. How long did it last?

A. Morgan was in Ohio—he was engaged in marching through Ohio two or three weeks.

Q. Then, as a matter of fact, the depreciation of property in the Pan Handle resulting from the terrified condition of the people did not last over two or three weeks?

A. Yes; I do not think property very much depreciated up there on account of that raid. The fear was that he might cross into West Virginia and destroy the towns and cities in that section.

Q. Now, Judge, from your information generally as to the situation in West Virginia during the War, did personal property in the whole state depreciate in its valuation during the War?

A. Unquestionably so, taking it as a whole.

Q. Do you know Judge J. M. McWhorter?

A. Very well.

Q. Do you know what position he held immediately after the War?

A. Yes, sir; he was State Auditor of West Virginia. He was the second Auditor elected in West Virginia after the State was formed.

Q. What do you think of Judge McWhorter's opportunities for observations of the conditions which you have mentioned?

A. They were as good as anybody's in the section of the state where he lived and moved among the people.

Q. Was Judge McWhorter reckoned a careful and accurate 13
Auditor?

A. A very competent and able man.

Q. If it were stated to you that Judge McWhorter's report as Auditor to the legislature of West Virginia showed an increase in the valuation of personal property in the County of Kanawha for the period between 1860 and 1865, would it not tend to change your opinion somewhat that you have expressed that personal property in Kanawha County depreciated in that period?

Question objected to by counsel for the defendant, because Judge McWhorter never reported anywhere for the period between 1860 and 1865, but published an Auditor's report for the year 1865.

A. While I have confidence in Judge McWhorter's ability, integrity and correctness, yet I do not believe that such statement was borne out by the facts. If property, as you stated in your question, in this county increased from 1860 or 1861 to 1865, I would account—

Counsel for the Commonwealth of Virginia objects to Judge Atkinson's answer continuing, so far as he attempts to account for Judge McWhorter's report.

(Answer concluded). I would account for it in two ways: First, by the assessors who fixed the value upon personal property and real estate in the county. As every one knows, no two 14
assessors will value property upon the same basis or by the same rule. And, secondly, that this large increase to which Judge McWhorter refers was doubtless created during the last year of the War, after it was practically settled that the Union, in the great conflict, would prevail in the end. Then values began to look upward.

Q. Without waiving the objection made to the answer, I will ask you this: Taking the first of your explanations, that is, that the assessors valued property in Kanawha County different from what other assessors would have done, is it not true that those assessors had greater and more accurate opportunity to ascertain the value of that property than you yourself did?

A. I will admit that an assessor ought to know more exactly the value of personal and real property in the county than I; but I certainly know that no two assessors ever valued the same property at the same rate.

Q. Now, taking the second of your explanations, that is, that the increase shown did, in your opinion, occur in the year 1864, and assuming that this is true for the purpose of the question, does not that indicate that any depreciation was fictitious rather than actual; that is, that the property itself had not diminished, but that its supposed value was lessened by reason of the apprehension of the people? 15

A. To a certain extent, that might be true.

Q. Now, I will ask you further, if it were stated to you that the same report of Judge McWhorter, just referred to, stated that the aggregate increase in values of property, real and personal, in the State of West Virginia, for the period between 1860 and 1865, was $6,170,946.00, would that not tend to change your opinion that property within the whole state of West Virginia depreciated during the War?

Counsel for the defendant objects to the question, because Judge McWhorter never did state in printed report, or otherwise, that the property increased the said sum during the period from 1860 to 1865, but Judge McWhorter did compare the assessment of 1860, as made by the Commonwealth of Virginia, with the assessment of 1865, which assessment was made after the close of the War, as made by the State of West Virginia, and the difference between the two assessments was the sum stated.

A. No, it would not. I have no doubt but that property values did increase in the upper part of the state to some extent during the

period of the War, which part was not burdened by soldiers of either side; but for the southern portion of the state, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all. On the con- 16
trary, I am quite confident that it did not do so. Furthermore, the so-called increase to which Judge McWhorter referred, is fully explained in the objection just above made by the counsel for the State of West Virginia.

Q. I now read you from Judge McWhorter's report for the year 1865, part of page 51, second paragraph, of said report, as follows:

> "By the returns of commissioners of the revenue of the several counties of this State in 1860, as ascertained from the report of Mr. Bennett, Auditor of Public Accounts of Virginia, made in the year 1861, the value of real estate assessed for taxation, according to the valuation made in 1856, amounted to the sum of $81,583,891.41. According to the United States census returns of 1860, the aggregate value of the real estate of the resident citizens of the respective counties amounted to the sum of $110,623,845.08, showing an excess of $29,039,933.67 in valuation not assessed for taxation. When we take into consideration that this excess arises from the valuation of the real estate of the resident owners only, several millions would be added to the excess by the valuation of large tracts held by non-residents which are not included in the census reports. This is the result of a comparison of the census returns with the valuation made four years previous, and when we consider that the value of real estate has enhanced each year since in an increased ratio, we might reasonably expect that a valuation 17
> made at this time would more than double the aggregate valuation as it now stands."

This is the expressed opinion of Judge McWhorter as Auditor. So far as real estate is concerned, would it not tend to change your opinion, if you have expressed such, that the value of real estate depreciated during the War in the State of West Virginia?

A. I have never said that the value of the real estate in West Virginia, in all of the counties in West Virginia, depreciated during the War. As I have stated, the upper portion of the State did not suffer very materially from the results of the War. But I adhere to my former statement, that in the whole southern tier of counties, with many of which I was familiar during the War as a young man living here in Kanawha County, it did materially depreciate. I do not now recollect, within my own personal knowledge, of the

sale or offering for sale of real estate in this section during that period. A general deadness prevailed because of the uncertainty of the result of the War and because of the scarcity of money with which to purchase property. It was a struggle on the part of most of our people to support themselves and families during that terrible period of the War.

Q. Referring to personal property, I now read you from Judge McWhorter's same report, page 48, as follows:

> "There have been no assessments made in several of 18
> the counties for the year 1865, consequently the figures
> given are but estimates for such counties. The assessments
> for 1860 are taken from the report of Mr. Bennett, Auditor
> of Public Accounts of Virginia, made in 1861. A large al-
> lowance has been made for the loss of property in those
> counties which suffered most during the rebellion. By this
> estimate the value of Personal Property in the year 1865,
> exceeds that of 1860 in the sum of $6,170,946. When we take
> into consideration what has been the prosperity of those
> counties not immediately exposed to the ravages and desola-
> tion of war, to thus overcome the loss sustained by the others,
> and still give this excess, it is highly gratifying."

Calling your attention to the fact that Judge McWhorter, in his estimate of the increase in value of personal property during the period covered by the War, has made "large allowance * * * * for the loss of property in those counties which suffered most during the rebellion," would you not now say that your opinion, as expressed, and which I understand is based on your observations as a young man from fifteen to nineteen years, would be changed by this expressed opinion of Judge McWhorter?

A. Not materially: First, because, as I have heretofore stated, of the inequality of values placed upon property by assessors; and, secondly, that at the beginning of the year 1865 the War was practically settled, and because business of all kinds as well as values of all kinds increased in dimensions. I can not believe that 19 from 1861 to 1864 there was any increase of personal property, not, certainly, in any of the southern tier of counties. On the contrary, I shall always believe, from what I saw myself and heard during that period, that such values decreased.

Q. Excepting the southern tier of counties referred to, you would not be willing to say that said increase did not take place in the remaining counties, would you?

A. No, sir; I would not, especially in the northern tier of counties.

Q. Would you be willing to say that there was not such an increase

in the counties, exclusive of what you term the southern tier of counties, sufficient on the average, considering any depreciation in that southern tier, to cause the increase noted by Judge McWhorter?

A. No; not altogether; because my candid judgment is that the increase to which Judge McWhorter refers was for the entire year of 1865, when the War has closed and when business of all kinds had started up, thus making a demand for the development of all kinds of property.

Q. Did you know Mr. J. R. Dodge, who was an official of the United States Department of Agriculture in 1865?

A. I never knew him personally. I have heard of him. His name is very familiar to me.

Q. Was he a man of accredited reputation in the State?

A. I would take him so to be. 20

Q. In a book written by Mr. J. R. Dodge in August of 1865, in the preface of which he acknowledges valuable information and suggestions from twenty or thirty seemingly prominent men, amongst them Honorable W. T. Willey, Governor A. I. Boreman, Honorable John M. Phelps, J. H. Dis DeBar and Mr. McWhorter, in Chapter 3, discussing the value of lands, I find on page 42 the following paragraph:

> "Indeed, it would be difficult to compute with accuracy, in Federal Currency, the actual appreciation already attained at the present writing, since the census of 1860. It would amount to tens of millions of dollars in advanced rates at which property is held, much of which is founded upon actual cash purchases within the past year. While this advance is mainly speculative, there is energy and enterprise and skill enough, as well as capital, interested and actually engaged in the development of these valuable resources, to insure a steady and permanent progress of industrial improvement."

Do you not think that the opinion of Mr. Dodge thus expressed, and which is substantiated by that of Judge McWhorter, should have the effect to change your own opinion as to the depreciation of realty?

A. Not altogether. That book was written after the close of the Civil War and when industries of all kinds began to start up, when people had turned their eyes in the direction of West Virginia and came into our midst for the purpose of becoming citizens of our new Commonwealth and to take a hand in its development. Property values, of course, increased at a very rapid rate. More- 21
over, the opinion expressed in the book is extremely roseate, and was intended to encourage our own people, to encourage more

than had theretofore been done the development of the natural resources of the counties which composed the new State which were then known to be very great. Our leading newspapers at that time published glowing articles intended to encourage immigration and to encourage our own people, which were laudable, indeed, and which proved to be very helpful. Not only the book of Mr. Dodge, but other pamphlets and publications were made with this object in view. I do not mean to say that the development which they portrayed was incorrect, but at that time, to say the least, such articles and publications were exceedingly roseate.

Q. In view of your reply, I call your attention to the fact that Mr. Dodge had founded his opinion, certainly to some extent, upon his report of actual instances. To substantiate this, I read you from page 44 of the same book, a paragraph which occurs in connection with Mr. Dodge's discussion of the lands purchased by George Washington and other great people.

> "As an evidence of the quality of these lands, it may be stated that George Edwards, upon similar lands in the vicinity, near Moundsville, sold sufficient hay in 1863 and 1864, in addition to pasturage for his cattle, to make an average of one hundred dollars per acre for his farm, a profit equivalent to its cost."

Would not that indicate that Mr. Dodge was not drawing wholly on his imagination? 22

A. In the first place, our first great president never purchased any lands in West Virginia. He located them and secured them by tomahawk titles. In the next place, I have no doubt that George Edwards in Marshall County, one of the best farming counties in the State of its size, raised and sold the hay Mr. Dodge referred to, and that, as you know, is in the extreme northern part of the State where farmers and other producers were not disturbed during the War. That kind of hay growing did not exist down in this region of the State, I am sure.

Q. Now, Judge Atkinson, as a last reference to this matter, I will read you a paragraph from page 147 of the same book, occurring in Mr. Dodge's discussion of the personal property of West Virginia, as follows:

> "In some counties great losses have been incurred in live stock from marauding, particularly in horses. Yet the State returns for 1862 give an increase in horses, over 1860, in the counties of Barbour, Brooke, Cabell, Doddridge, Harrison, Hancock, Jackson, Kanawha, Lewis, Monongalia, Marshall, Ohio, Preston, and several others. In some cases this increase

is extraordinary, as in Kanawha, from 1402 to 5222, doubtless due to a great influx from Fayette and Greenbrier, on the great highway of Rebeldom and from which there is no report. The same disturbing causes have affected other stock to the same extent. Sheep had already increased 23
in 1862, in Brooke, from 40,620 to 46,200; in Hancock, from 21,402 to 29,932; in Harrison, from 13,202 to 17,991; in Monongalia, from 10,945 to 17,594; in Marshall, from 16,022 to 22,197; in Preston, from 19,084 to 25,980. Since that date there has been a still heavier increase."

I now ask you if this assertion of Mr. Dodge, taking his information from the returns for the year 1862, does not indicate to you a large increase in the values of personal property, at least so far as live stock was concerned?

A. The comparison made by Mr. Dodge is between 1860, when the War was coming on and shaping itself for its horrible disasters, and 1862, before it had well begun. If he had made his comparison between 1860 and 1863, it would have been, in my judgment, materially different.

Q. You spoke of General Loring's offering to pay for the dry goods and grocery store of your father in Confederate money. Did your father accept this offer?

A. I did not mean to say that General Loring himself offered to pay anything. It was his men that supplied themselves with the goods I referred to, and they had, as I was informed, a bountiful supply of Confederate money. My father and his partner, Mr. Slack, were not in Charleston at the time, they having refugeed to Ohio from fear of personal injury of Confederate soldiers. The store was in charge of a clerk. I knew nothing of it myself personally, only I know that when the Confederates left here there were no goods left in the store; and I often heard my father say that he made no inquiry about the Confederate money to pay for the goods, 24
if they were paid for, because such money was of no value here.

Q. At what date was this taking of your fathers property?

A. In September, 1862.

Q. Do you know what the ratio of Confederate money to gold was in September, 1862?

A. I do not, in this section, or in any section for that matter. I know that here it could not be passed as currency at all, at least that is my recollection of it.

Q. Do you know that Confederate money, in September, 1862, passed current in the State of Virginia and all over the South and had purchasing power?

A. I do.

Q. If your father had accepted the Confederate money which was offered him and had demanded enough to have been equal to the gold value of his goods, was it not possible for him to realize value received in September, 1862, for that Confederate currency?

A. I hardly think it was; because he could not go to Richmond or to any place in the South to exchange it for good money. First, he would be afraid to go; and second, he could not get greenback money in the South that would be current here. Moreover, he was not here, as I have stated; and so far as I know, he never received any value whatever from any source for the goods taken.

Q. If he did not receive this value, however, it was not the 25
fault of the parties taking it, as I understand your deposition, so far as that value was estimated in Confederate money?

A. As I was not personally present at the time the goods were taken, I know nothing about the amount tendered or the amount paid to any one in the store. My information was then that General Loring's order was that his troops should not improvidently destroy property of any kind. A number of buildings were destroyed upon his entrance to this town, but they were all burned by the retreating Federal troops. I do not recollect a single building that was destroyed in this section by General Loring's order.

Q. I understood you to say that you do not recollect a single instance of the taking of any personal property by any of the regularly organized forces of either side without payment being made or tendered therefor: is that correct?

A. Of my own personal knowledge, I do not know of the destruction of any personal property by General Loring's troops.

Re-Direct Examination.

By Mr. McClintic:

Q. Was not the year 1865, under the stable government then established in the State of West Virginia and under the protection thus given to all property in this State, a year of great speculation in all sorts of enterprises in the State of West Virginia?

A. My recollection is that it was.

Q. Was not most of the lands up Elk River, for instance, leased or purchased for oil purposes in the year 1865?

A. I knew of a large number of oil leases being made on Elk 26
River, and I knew of one sale of a small tract of land at the mouth of Two Mile on Elk, which tract sold at what we considered a fabulous price, being in the neighborhood of forty thousand dollars. My father owned something like one thousand acres five miles from Charleston on Elk River, and he was offered forty-five thousand

dollars cash for it, but he asked fifty thousand, and allowed the five thousand dollars between them to defeat the sale; and subsequently, after his death, I, as administrator of his estate, sold it for about ten thousand dollars.

Q. Wasn't the period of the spring of 1863 the period of the greatest depression in the values of both real and personal property in this section of West Virginia?

A. I think it was.

Q. If there really were 5,222 horses in the County of Kanawha in 1862, being four times more than there were in 1860, did not that include all the cavalry horses of the Union and Confederacy in the county?

Counsel for the Commonwealth of Virginia objects to this question, on account of the fact that it calls for an expression of opinion by the witness, unless said question is answered from the personal knowledge of the witness.

A. I do not know about that; it may have done so, and yet it may not. 27

Q. Was there not a considerable influx of people, especially of Union people seeking protection, into the County of Kanawha during the War?

Same objection to this question as was made to the preceding question.

A. There was.

And further dependent saith not.

Signature of witness waived.

Counsel for the Commonwealth of Virginia objects to the answers of the witness to all of the foregoing questions so far as the said answers show that they are not made from his own personal knowledge.

Counsel for the State of West Virginia excepts to all of the questions asked by the counsel for the Commonwealth of Virginia in so far as they assume facts as true from publications or other works not in evidence in this case.

Counsel for the Commonwealth of Virginia here states that in so far as the publications from which he read or quoted were read and quoted, they were considered by him as in evidence in this cause.

STATE OF WEST VIRGINIA. 28

County of Kanawha, to-wit:

I, J. F. Cork, a notary public in and for the County of Kanawha and State of West Virginia, do hereby certify that the foregoing deposition of Judge George W. Atkinson was taken at the time and place as therein set out; and I further certify that said witness was duly sworn.

Given under my hand and official seal this 14th day of July, 1909.

(Seal) J. F. CORK,

Notary Public in and for the County of Kanawha and State of West Virginia.

My Commission expires Dec. 31, 1909.

Notary's Fee $7.75.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT F-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

Plaintiff

vs.

STATE OF WEST VIRGINIA

Defendant

JOINT EXHIBIT F-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
74 William Street, New York
For the Plaintiff

THOMAS REED BOOT
Certified Public Accountant
30 Church Street, New York
For the Defendant

F-1
P-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT F-1.

All Moneys Paid into the Treasury of the Commonwealth from the Counties Included Within the State of West Virginia from March 19th, 1823, to December 31st, 1860, Inclusive.

PARAGRAPH VI OF DECREE.

		Amounts agreed upon by Plaintiff and Defendant as credits to West Virginia.	Items claimed by Defendant, agreed to as to amounts, but not admitted by Plaintiff to be credits to West Virginia.
1	Bonus received from Banks in West Virginia Counties		$ 96,253.62
2	Clerks of County and Corporation Courts	$ 161,223.06	
3	Clerks of Superior Courts	96,880.51	
4	Clerks of District Courts	769.28	
5	Clerks of Superior Courts of Chancery	2,797.59	
6	Costs—Civil and Criminal Prosecutions	1,926.36	
7	Dividends from Banks in West Virginia Counties		786,666.98
8	Dividends and Interest from Turnpike Companies in West Virginia Counties		13,595.48
9	Dividends from Bridge Companies in West Virginia Counties		6,028.51
10	Dividends from Interstate Turnpike Companies (Proportion)		1,355.92
11	Dividends from James River & Kanawha Company (Proportion)		352.21
12	Escheats	4,603.57	
13	Fines, Forfeitures and Penalties	57,911.76	
14	Interest from City of Wheeling		571.51
15	Land—Sale of Unappropriated	109,103.64	
16	Land—Redemption of	58,944.10	
17	Land—Sale of Delinquent and Forfeited	17,694.73	
18	Land—Redemption of and Sale of Delinquent and Forfeited	48,699.30	
19	Militia Fines	73,926.39	
20	Merchants and Mechanics Bank Stock sold (Bonus Stock)		43,103.35
21	Northwestern Bank—Profit on 1,082 shares sold		5,471.42
22	Northwestern Turnpike Road—Tolls		126,339.89
23	Staunton & Parkersburg Road—Tolls		17,080.71
24	Taxes—General Revenue	5,037,421.46	
25	Taxes—Capitation	123,111.10	
26	Tax on Free Negroes	4,079.52	
27	Tax on Dividends	53,202.60	
28	Tax on Railroad Travel	49,202.01	
29	Tax on Notarial Seals	48,247.02	
30	Voluntary Enslavement	47.50	
31	Miscellaneous — Unclassified Receipts	4,604.16	

F-1
P-2

SUMMARY.

Total claimed by Defendant	$7,051,215.56
Total admitted by Plaintiff	5,954,395.66
Total not admitted by Plaintiff	$1,096,819.90

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph VI of the Decree.

[*Vol. 1. November 16, 1908. Direct Examination of A. G Potter.*]

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH VI OF THE DECREE.

76

ARTHUR G. POTTER,
testified as follows:

Mr. Anderson: The next is Plaintiff's Exhibit F-1. This is responsive to the sixth paragraph of the decree. It purports to be a statement of all money paid into the Treasury of the Commonwealth from the counties included in the State of West Virginia during the period prior to the admission of the latter State into the Union.

By Mr. Anderson:

Q. State what you know as to the correctness of that statement, how it was made up, by whom it was made up, and from what sources of information.

A. The figures in the first division, redemption of land and escheats, were taken from the Auditor's ledgers, from 1816 to 1822, and the Literary Fund Journals A, B and C. The redemption of lands and escheats were payments to the Literary Fund.

The second division, public lands and the Land Registrar's Office, were taken from the yearly printed report of the Auditor of Public Accounts.

Q. Fines, forfeitures and penalties is another item?

A. They were taken from the Literary Fund Journals, A, B and C.

Q. And the largest item of that account, contributions to the general treasury of Virginia in the shape of taxes by the counties now constituting the State of West Virginia—from what source did you derive that statement? 77

A. First, from the ledgers of the Auditor of Public Accounts, and afterwards verified by reference to the various journals and day books.

Q. Please state your knowledge, Mr. Potter, as to the correctness of the items and statements embodied in this schedule, in particular and in general?

A. The figures were taken off by my assistants, and—

Q. From what?

A. From the various books I have just mentioned, and then handed to other men who called them back. It was not possible to check them up to any total, so we merely applied the rule of the double check. That is true of all the items contained in the schedule, which I believe are correct.

Mr. Anderson: Please file that.

(The paper referred to, entitled, "Commonwealth of Virginia vs. the State of West Virginia. Receipts from West Virginia counties. Redemption lands and escheats. Public lands and Land Registrar's Office. Fines, forfeitures and penalties. Tax receipts (Less tax refunds). Article VI." is filed herewith, marked "Plaintiff's Exhibit F 1.")

Mr. Anderson: Plaintiff's Exhibit F 2 is the same statement, giving the details a little more fully.

The Special Master: Is it supplementary to Plaintiff's Exhibit F 1?

Mr. Robinson: Yes. 78

By Mr. Spooner: Will you give me the pages of the records from which you compiled these?

A. I don't know whether that is shown in this schedule or not. In a great many instances the journals were not paged. In those cases we show the years—

Q. From what page to what page, of what books?

A. Those do not show any pages at all.

Mr. Anderson: I offer this second statement in evidence.

(The paper referred to is filed herewith, marked, "Plaintiff's Exhibit F 2.")

[*Vol. 5. May 6, 1909. Cross Examination of A. G. Potter.*]

ARTHUR G. POTTER, 382
resumed the stand for further
Cross Examination.

By Mr. McClintic:

Q. In relation to F-1 No. 6—

The Special Master: Do you mean page 6?

Mr. McClintic: Plaintiff's Exhibit F-1.

The Special Master: Relating to the 6th paragraph?

Mr. McClintic: Relating to the 6th paragraph of the decree.

The Special Master: What page are you examining?

Mr. McClintic: I was looking at the first page. I want to 383
ask a general question. This exhibit is in relation to the receipts from Virginia counties.

By Mr. McClintic:

Q. When did you begin?

A. The fiscal year ending September 30, 1820.

Q. The first of the year?

A. The fiscal year.

Q. In other words, the 1st of October?

A. Yes, sir.

Q. And when did you end?

A. December 31, 1860.

Q. That is all I desire to ask on that schedule.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: Please take defendant's exhibit F-1. 567

(The paper referred to was received in evidence and marked Defendant's Exhibit F-1.)

By Mr. McClintic:

Q. Please state if that was made under your direction and signed by you?

A. It was, sir.

Q. Please state if the facts and figures therein stated are correct?

A. They are so far as the items included therein from the books of original entry of the Commonwealth of Virginia.

Q. On the bottom of page 2 of that exhibit I find "Merchant's & Mechanics Bank of Wheeling; sale of 400 shares bonus stock, held by the Board of Public Works, $43,103.35." Please explain to the Master that item.

A. That was bonus stock issued to the Commonwealth of Virginia by this bank located in Wheeling. It was in the nature of a franchise tax. It could be paid for in stock, and in this case the tax was paid by the stock. It was par value $40,000, and it was held by the State until 1853 and then sold for $43,103.35.

The Special Master: That is where you got that item?

The Witness: That is the item, yes. It was entered in the books in 1857, but the sale, I believe, took place in 1853.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

[Mr. Harrison:]

Q. Next is defendant's Exhibit F-1. This relates to paragraph 6 of the decree—all moneys paid into the Treasury of the Commonwealth by the counties included within the territory of West Virginia. Please state the difference between the result ascertained by you and that shown by the corresponding exhibit for the plaintiff? 655

A. Under paragraph 6, according to the Virginia Exhibit, the receipts from West Virginia counties are $6,111,572.23, and according to West Virginia's Exhibit, $7,081,538.48, an excess on West Virginia's Exhibit of $969,966.25. 656

Q. Did your list of payments include any dividends received on stock of private companies?

A. Stock of private companies?

Q. Yes.

The Special Master: In which the State was a stockholder?

Mr. Harrison: Yes.

A. Yes; it included dividends on stock in banks located within the territory now constituting the State of West Virginia, dividends on stock in turnpike companies, lying wholly within the present State of West Virginia, dividends on stock in bridge companies lying wholly within the present State of West Virginia, and dividends on stock in turnpike companies extending into and between the present States, divided on a mileage basis.

By Mr. Harrison:

Q. Does the schedule show the several amounts under those heads?

A. Yes, sir.

Q. And you can show it in the aggregate. Could you do it readily for us now?

A. I think so.

Q. I want to know how much you have included as payments into the treasury embraced under the heads you have just given us?

A. There are same other items included with those dividends. For instance, there is some interest on loans. 657

The Special Master: Why do you not have them worked out when they work out the other details in connection with the other schedules, unless you want to get the information right now?

Mr. Harrison: His statement, for example, says "Dividends on stocks in banks located in the territory now constituting the State of West Virginia."

The Special Master: That is a large item, $766,666.

Mr. Harrison: That accounts for the biggest part of the difference.

The Special Master: What do you want: The detail of that?

A. You mean from what banks that came?

Mr. Harrison: I want it first to give the items so as to show the aggregate amount received and charged on account of stock dividends, and so forth. Then I wanted the details supporting it.

A. Very well, we can give you that, but it will take some little while, maybe a few hours, to prepare it and have it typewritten.

Mr. Harrison: Evidently the difference between Mr. Potter and himself arises out of the fact that he has charged dividends as money contributed by West Virginia counties to the Treasurer of the State.

The Special Master: Are those the same items involved 658
in the other schedules as to which the investments of the State in the stock are taken into consideration?

Mr. Spooner: Yes, sir.

The Special Master: The same banks?

Mr. Anderson: These were dividends received by the State during that period from those investments.

The Special Master: Upon one side the territory is being charged with the investment, and upon the other side they are taking a credit for the dividends, are they, in the same banks in which the investments were made?

Mr. McClintic: The same banks; yes, sir.

The Special Master: That is, in one part of the schedule West Virginia is charged with investments in the stock.

Mr. McClintic: Virginia charged us with investments in the stocks, and gave us no credit for the dividends.

The Special Master: And you take credit for the dividends on that same stock?

Mr. McClintic: Yes, sir; and we say we are to be charged for the stocks only what we got them for in 1863.

The Special Master: That is a question of amount, but it is a question whether these dividends were predicated upon the stock as to which investments were made, charged against West Virginia in the schedule. That is right, is it?

Mr. McClintic: Yes.

By Mr. Harrison:

Q. I noticed that as a part of your statement of receipts by 659
Virginia from the counties of West Virginia, you have included $153,475 of toll on a mileage basis from the Northwestern turnpike?

A. Yes.

The Special Master: Are those the same roads as to which charges are made in some parts of the schedule?

Mr. McClintic: If your Honor please, you asked us yesterday why the northwestern turnpike road had so much more charged to it by West Virginia than Virginia charged. That is practically the difference. Those tolls were paid back on the road, and we charged it.

The Special Master: You took the tolls into account?

Mr. McClintic: Yes, sir.

The Special Master: And they did not take them into account either way?

Mr. McClintic: No, sir.

The Special Master: You gave credit for a larger charge, and here you seek to get allowance for the tolls?

Mr. McClintic: These tolls were spent on the road just as they were collected. They were immediately put back on the road, and as we understood it were chargeable as a part of the money that went into the road, but we claim credit for it, because we paid it.

By Mr. Harrison:

Q. Explain one of the items you have in that schedule under the head of "bonus received from banks within the territory now constituting the State of West Virginia, paid into the treasury out of dividends, being a tax on charter privileges, $96,000."

The Special Master: Is that the franchise tax we have heard about?

Mr. Harrison: That may be. 660

The Special Master: Is it, I say?

A. Yes, sir.

The Special Master: Or the charge for the privilege of exercising the franchise?

A. Yes, sir; that is what it was.

Mr. Anderson: The State charged that to grant a charter to the bank?

A. And a certain amount for refunding. It was a tax on the charter privilege.

By Mr. Harrison:

Q. Was that contributed by any of the counties of West Virginia?

A. So it says—within the territory now constituting the State of West Virginia.

Q. But the decree requires you to render a statement of all moneys paid into the Treasury from the counties?

A. Yes, sir; from the counties.

Q. Did that come from any counties in West Virginia?

A. Certainly.

Q. What counties did it come from?

A. Wherever the bank was located.

Q. You construe that as coming from the county because the situs of the bank was in a particular county?

A. That is it.

Q. You testified when we were on paragraph 3 of the decree, in relation to the expenditures of money by Virginia in West Virginia, that you did not consider it money expended by Virginia in West Virginia where she subscribed to the stock of a joint 661
stock company located in that State?

A. Yes, sir.

Q. I understand you to say now that when that same company paid a dividend to Virginia on the stock so subscribed for, you do consider that a payment by a West Virginia county to the Treasury of Virginia?

A. It is included in that schedule.

Q. How do you reconcile that logic?

A. I think it is not difficult of reconciliation. Where money is subscribed to a stock company, paid out of the Treasury here for a subscription to stock, and stock taken for it and held in the treasury, it can hardly be construed as an expenditure within the counties that now form West Virginia, as I understand it, while the money paid from dividends came indirectly from those counties that form West Virginia.

Q. The money paid on the stock which you do not consider an expenditure in West Virginia, is, however a contribution from the county where the company is located to the Treasury of Virginia?

A. As a matter of fact: yes.

[*Vol. 6. May 7, 1909. Re-Direct Examination of T. B. Dixey.*]

[Mr. McClintic:]

Q. Jumping from the first exhibit to No. F-1, No. 6, in reference to payment of counties, were there any moneys paid into Virginia by a county as a county? 694

The Special Master: You mean as a municipal organization?

Mr. McClintic: As a county or organization of any character. Were not all the funds paid in paid by individuals?

A. A State depository; is that what you mean?

Q. No; Mr. Harrison asked you about the counties paying in money. Did any county ever pay anything as a county, in any instance?

A. I will not say in any instance. I do not think I understand the scope of your question.

Q. The question is—

The Special Master: Did the money that appears to have been paid to the State of Virginia by West Virginia come from the county treasuries, in any case, or did it come from institutions or organizations within the territory. Is not that the question?

Mr. McClintic: No; what I want to get at is this. Mr. Harrison seems to think that that decree meant that in order to get credit from the county it must be paid by the county as a county, and I ask him if these taxes were not levied by State authority and directly paid by the individuals to the agent of the State, for the State?

The Special Master: Without going through the county treasury?

Mr. McClintic: Without going through any county.

The Special Master: Or having any official mark.

Mr. McClintic: Any official mark of the county.

The Witness: No, sir; not in that sense.

The Special Master: What is your answer?

The Witness: Originally the books showed the county from which the money was paid, such and such a county; the clerk of such and such a county.

The Special Master: Let us see what the entries did show.

The Witness: The books show the county in which these payments originated, the original books of entry. I do not recall, without reference to the books, whether they show them as direct payments into the Treasury from the County official as an official act of that official or not. I do not remember about that. That is made clear on the books, perhaps, but I do not remember about that. But the books do show the county in which the receipt originated, or the disbursement was made.

Mr. Mollohan: It was fixed by statute. The sheriff took the tax ticket. There was the same levy over the State. This land book would go into the hands of the sheriff. He made the tickets out and collected in each county and then transmitted it to the Treasurer here.

The Special Master: If the statute shows it, it is easy 696
to develop it.

The Witness: It shows receipts by clerks of county courts, and that sort of thing.

The Special Master: The county paid nothing except her own revenue, and she spent her own revenue?

Mr. Mollohan: Yes, sir.

The Special Master: Is there anything in the way of re-cross examination? There does not seem to be anything else. Call your next witness.

[*Vol. 7. July 1, 1909. Plaintiff's Substitute Exhibit F-1.*]

[The Special Master]:

Now, we come to the sixth paragraph, plaintiff's exhibit F-1. 866
(Reading from decree):

"All moneys paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

You submit Plaintiff's Substitute Exhibit F-1?

Mr. Anderson: Yes, sir.

The Special Master: Do the parties agree upon the items stated in Plaintiff's Substitute Exhibit F-1?

Mr. Harrison: I think we are in accord on the items. It is only a question of inclusion or exclusion.

Mr. Dixey: No, sir; not entirely. I would like to have that put in the class with C-1, and Mr. Potter and I will take it up. It is only a matter of a few hours, I think.

[*Vol. 7. July 2, 1909.*]

The Special Master: Let me make this one inquiry. There 1017
are some reconcilings to be done by the experts, and that is disposed of, because we all agree that we will take what they agree upon. Has Virginia submitted everything they are now prepared to submit on all the paragraphs?

Mr. Harrison: We left No. 6 open—

The Special Master: Between the experts— 1018

Mr. Harrison: Yes, I think so.

The Special Master: If they are not able to report, we will take their report later.

Mr. Dixcy: There is no difference whatever.

Mr. Anderson: They accept Virginia's Schedule as to the amounts.

The Special Master: As I understand it now, so far as Virginia is concerned, they have nothing further to submit on any of these paragraphs.

Mr. Harrison: One moment. Mr. Potter made a slight correction in that schedule of the receipts for West Virginia, and here is where it appears. This is reconciling it.

The Special Master: Did you go over that with Mr. Dixcy?

Mr. Potter: Yes, sir; every item.

Mr. Harrison: There are only one or two immaterial items.

The Special Master: Let Mr. Dixcy and Mr. Potter sign it and hand it to the stenographer.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT G-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT G-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
56 William Street, New York
For the Plaintiff

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT G-1.

All Money, Property, Stocks and Credits which West Virginia Received from the Commonwealth of Virginia.

PARAGRAPH VII OF DECREE.

A. Money.

From
"LEDGER 1863
TREASURER
WEST VA."

Folio 4, July 2nd, 1863	Received from "Treasury of Virginia by Campbell Tarr" and deposited in the Merchants & Mechanics Bank at Wheeling	$ 92,866.17
Folio 36, July 2nd, 1863	Received from "The Treasurer of Virginia" and deposited in the North-Western Bank at Wheeling	47,734.03
Folio 56, July 9th, 1863	Received from "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wellsburg	9,399.80
		$150,000.00
Folio 100, Feb. 1st, 1864	Received from the "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wheeling	20,771.46
		$170,771.46

B. Property .....
C. Stocks .....
D. Credits .....

The Books of West Virginia, except the Treasurer's Ledger above referred to, not being obtainable, we are unable to ascertain what other property, if any, was taken over by West Virginia.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant certifies to the correctness of the figures shown by the plaintiff in this exhibit, but denies that the total amount, or any part thereof, is a proper charge against West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

MONEY, PROPERTY, STOCKS AND CREDITS RECEIVED BY WEST VIRGINIA.

DEFENDANT'S EXHIBIT G-1.

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

DEFENDANT'S EXHIBIT G-1.

SUMMARY OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED I CEDING EXHIBIT, BUT NOT INCLUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGAN OF THE RESTORED GOVERNMENT OF VIRGINIA;

TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WEST VIRGINIA; AND THE A BY THE COMMONWEALTH IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SAID COMPANIES AND BAN PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

NOTE:—In the following statements and schedules, no value is shown as chargeable to West Virginia except in the cases of the Fairmont Bank in Marion County and the Northwestern Bank of Virginia at Wheeling, that no evidence has been produced to determine the value of the stock of any of the said companies other than the two above mentioned.

	Total amount paid by Virginia.	Dividends.	Value chargeable to West Virginia.
Total, turnpikes and roads lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock	$ 700,103.49	$ 12,600.54	
Total, navigation companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	210,500.00		
Total, bridge companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	78,412.50	6,028.51	
Total, turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia, in which the Commonwealth held stock,	154,652.84	1,901.27	
Northwestern Bank of Virginia (at Wheeling)	341,800.00	534,815.16	$341,800.00
Fairmont Bank, (Marion County),	50,000.00	2,000.00	50,000.00
James River and Kanawha Company,	9,547,582.21	10,092.00	
Total,	$11,083,051.04		

DEFENDANT'S EXHIBIT G-1.

AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY PRE-IBIT, BUT NOT INCLUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA;

THE NATURE AND DESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WEST VIRGINIA; AND THE AMOUNT PAID E COMMONWEALTH IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SAID COMPANIES AND BANKS PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

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Total,	$11,083,051.04		

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.
Brandonville, Kingwood and Evansville Road,	March 13, 1837	$ 45,000.00	$ 25.00	$ 8,000.00	$ 3,193.46		
Buckhannon and Little Kanawha Turnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00		
Charleston and Point Pleasant Turnpike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00		
Charleston, Ripley and Ravenswood Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41		
Cacapon and North Branch Turnpike Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00		
Clarksburg and Buchanan Turnpike Company,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13		
Cranberry Summit and Brandonville Turnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11		
Clarksburg and Philippi Turnpike Company,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25		
Clarksburg and Wheeling Turnpike Company,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35		
Clear Fork Road Company,	March 27, 1858	5,000.00	25.00	3,000.00	600.00		
Dunkard Creek Turnpike Company,	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00		
East River and Princeton Turnpike Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00		
Fish Creek Road Company,	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00		
Franklin and Circleville Turnpike Company,	" 10, 1853	4,000.00	25.00	2,400.00	2,175.00		
Gilmer, Ripley and Ohio Turnpike Company,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80		
Gnatty Creek and West Union Turnpike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55		
Gilmer and Braxton Turnpike Company,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80		
Grave Creek and Pennsylvania Line Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	1860	$ 412.50

NT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
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ittle Kanawha Turnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00			
nt Pleasant Turnpike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00			
and Ravenswood Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41			
Branch Turnpike Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00			
chanan Turnpike Company,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13			
and Brandonville Turnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11			
ippi Turnpike Company,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25			
eeling Turnpike Company,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35			
Company,	March 27, 1858	5,000.00	25.00	3,000.00	600.00			
npike Company,	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00			
nceton Turnpike Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00			
Company,	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00			
ville Turnpike Company,	" 10, 1853	4,000.00	25.00	2,400.00	2,175.00			
Ohio Turnpike Company,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80			
West Union Turnpike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55			
n Turnpike Company,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80			
ennsylvania Line Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	1860	$ 412.50	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ET

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held Stock

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.
						1848	$ 69.60
						1849	35.50
						1850	47.20
						1851	83.00
						1852	94.66
						1853	59.26
Holliday's Cove Turnpike Company,	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33	1854	71.00
						1856	23.66
						1857	88.75
						1858	66.27
						1859	20.69
						1860	55.91
						Total,	$ 715.50
Holliday's Cove and Wellsburg Turnpike Company,	April 5, 1858	* Included in above.	25.00	Included in above.	5,916.67		
Hampshire and Morgan Turnpike Company,	March 15, 1849	11,000.00	25.00	6,600.00	6,510.00		
Harrisville Turnpike Company,	" 28, 1848	13,500.00	50.00	8,100.00	6,000.00		
Hedgesville and Potomac Turnpike Company,	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00		
Hardy and Randolph Turnpike Company,	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78		
Holliday's Cove and New Cumberland Turnpike Company,	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00		
Kingwood and West Union Turnpike Company,	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48		
Lewisburg and Blue Sulphur Springs Turnpike Company,	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00		
Leading Creek and Buffalo Creek Turnpike Company,	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84		
Letart Falls and West Columbia Turnpike Company,	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00		
Logan, Raleigh and Monroe Turnpike Company,	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24		
Marshall and Ohio Turnpike Company,	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75		
						1853	$ 146.00
Martinsburg and Potomac Turnpike Company,	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00	1854	306.00
						1859	459.00
						1860	765.00
						Total,	$1,676.00
Middleway and Gerardstown Turnpike Company,	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75		
Morgantown and Bridgeport Turnpike Company,	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40		
Moorfield and Alleghany Turnpike Company,	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78		
Moorfield and North Branch Turnpike Company,	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75		

EMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held Stock

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value Chargeable to West Virginia.
						1848	$ 69.60	
						1849	35.50	
						1850	47.20	
						1851	83.00	
						1852	94.66	
						1853	59.26	
e Turnpike Company,	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33	1854	71.00	
						1856	23.66	
						1857	88.75	
						1858	66.27	
						1859	20.69	
						1860	55.91	
						Total,	$ 715.50	
e and Wellsburg Turnpike Company,	April 5, 1858	* Included in above.	25.00	Included in above.	5,916.67			
d Morgan Turnpike Company,	March 15, 1849	11,000.00	25.00	6,600.00	6,510.00			
rnpike Company,	" 28, 1848	13,500.00	50.00	8,100.00	6,000.00			
d Potomac Turnpike Company,	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00			
ndolph Turnpike Company,	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78			
e and New Cumberland Turnpike Company,	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00			
West Union Turnpike Company,	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48			
Blue Sulphur Springs Turnpike Company,	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00			
and Buffalo Creek Turnpike Company,	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84			
nd West Columbia Turnpike Company,	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00			
n and Monroe Turnpike Company,	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24			
Ohio Turnpike Company,	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75			
						1853	$ 146.00	
						1854	306.00	
nd Potomac Turnpike Company,	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00	1859	459.00	
						1860	765.00	
						Total,	$1,676.00	
d Gerardstown Turnpike Company,	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75			
nd Bridgeport Turnpike Company,	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40			
Alleghany Turnpike Company,	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78			
North Branch Turnpike Company,	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.
Newark Turnpike Company,	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00		
North River Turnpike Company,	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00		
New Manchester Turnpike Company,	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00		
New Creek and Hardy Turnpike Company,	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1857	$ 271.25
Patterson's Creek Valley Turnpike Company,	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00		
Parkersburg and Elizabethtown Turnpike Company,	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00		
Pleasant Valley and Tunnelton Turnpike Company,	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45		
Potomac Turnpike Company,	" 4, 1851	4,500.00	20.00	2,700.00	2,489.70		
Red and Blue Sulphur Springs Turnpike Company,	January 18, 1836	22,000.00	50.00	10,200.00	8,856.66		
Ravenswood and Reedy Creek Turnpike Company,	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99		
Ritchie and Gilmer Turnpike Company,	March 12, 1851	15,000.00	25.00	9,000.00	8,891.75		
Reedy and Harrisville Turnpike Company,	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87		
Raleigh and Boone Graded Road Company,	January 28, 1854	5,000.00	25.00	3,000.00	1,800.00		
Smithfield, Charlestown and Harper's Ferry Turnpike Company,	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00		
Salem and Harrisville Turnpike Company,	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92		
						1832	$ 399.38
						1833	309.64
						1834	354.82
Sheperdstown and Smithfield Turnpike Company,	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1835	269.37
						1836	126.00
						1837	98.00
						1838	58.20
						1839	40.00
						Total,	$1,655.41
Sistersville and Salem Turnpike Company,	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00		
Shinston Turnpike Company,	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26		
Sandy River Turnpike Company,	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00		
						1855	$ 400.12
						1856	654.75
Sweet and Salt Sulphur Springs Turnpike Company,	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1857	582.00
						1858	363.75
						1859	459.00
						Total,	$2,459.62

EMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
pike Company,	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00			
Turnpike Company,	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00			
er Turnpike Company,	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00			
Hardy Turnpike Company,	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1857	$ 271.25	
ek Valley Turnpike Company,	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00			
d Elizabethtown Turnpike Company,	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00			
and Tunnelton Turnpike Company,	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45			
pike Company,	" 4, 1851	4,500.00	20.00	2,700.00	2,489.70			
Sulphur Springs Turnpike Company,	January 18, 1826	22,000.00	50.00	10,200.00	8,856.66			
d Reedy Creek Turnpike Company,	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99			
mer Turnpike Company,	March 12, 1851	15,000.00	25.00	9,000.00	8,891.18			
rrisville Turnpike Company,	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87			
oone Graded Road Company,	January 28, 1854	5,000.00	25.00	3,000.00	1,800.00			
rlestown and Harper's Ferry Turnpike Company,	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00			
rrisville Turnpike Company,	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92			
						1832	$ 399.38	
						1833	309.64	
						1834	354.82	
nd Smithfield Turnpike Company,	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1835	269.37	
						1836	126.00	
						1837	98.00	
						1838	58.20	
						1839	40.00	
						Total,	$1,655.41	
Salem Turnpike Company,	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00			
pike Company,	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26			
Turnpike Company,	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00			
						1855	$ 400.12	
						1856	654.75	
Sulphur Springs Turnpike Company,	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1857	582.00	
						1858	363.75	
						1859	459.00	
						Total,	$2,459.62	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.,

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.
St. Mary's Turnpike Company,	February 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00		
Weston and Gauley Bridge Turnpike Company,	March 25, 1848	90,000.00	25.00	66,000.00	64,098.31		
Weston and West Union Turnpike Company,	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21		
Weston and Fairmont Turnpike Company,	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50		
Wheeling, West Liberty and Bethany Turnpike Company,	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00		
						1838	$ 140.00
						1839	280.00
						1840	340.00
						1841	320.00
						1842	160.00
						1844	220.00
						1845	140.00
						1846	200.00
						1847	200.00
						1848	240.00
White and Salt Sulphur Springs Turnpike Company,	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00	1849	220.00
						1850	220.00
						1851	300.00
						1852	300.00
						1853	240.00
						1854	260.00
						1856	160.00
						1857	240.00
						1858	260.00
						1859	180.00
						1860	400.00
						Total,	$5,020.00
Wellsburg and Bethany Turnpike Company,	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22		
Wellsburg and Washington Turnpike Company,	January 18, 1808	17,833.33	50.00	7,133.33	7,071.01	1837	$ 178.13
						1838	212.13
						Total,	$ 390.26
Williamsport Turnpike Company,	March 15, 1849	10,000.00	25.00	6,000.00	5,130.65		
West Milford and New Salem Turnpike Company,	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32		
West Union Turnpike Company,	February 24, 1851	12,000.00	25.00	7,200.00	3,054.00		
Walnut Gap Road Company,	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37		
Total, Turnpikes and Roads,		$1,407,618.33		$847,163.33	$700,103.49		$12,600.54

TEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
rnpike Company,	February 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00			
Gauley Bridge Turnpike Company,	March 25, 1848	90,000.00	25.00	66,000.00	64,098.31			
West Union Turnpike Company,	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21			
Fairmont Turnpike Company,	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50			
st Liberty and Bethany Turnpike Company,	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00			
						1838	$ 140.00	
						1839	280.00	
						1840	340.00	
						1841	320.00	
						1842	160.00	
						1844	220.00	
						1845	140.00	
						1846	200.00	
						1847	200.00	
						1848	240.00	
t Sulphur Springs Turnpike Company,	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00	1849	220.00	
						1850	220.00	
						1851	300.00	
						1852	300.00	
						1853	240.00	
						1854	260.00	
						1856	160.00	
						1857	240.00	
						1858	260.00	
						1859	180.00	
						1860	400.00	
						Total,	$5,020.00	
l Bethany Turnpike Company,	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22			
l Washington Turnpike Company,	January 18, 1808	17,833.33	50.00	7,133.33	7,071.01	1837	$ 178.13	
						1838	212.13	
						Total,	$ 390.26	
Turnpike Company,	March 15, 1849	10,000.00	25.00	6,000.00	5,130.65			
and New Salem Turnpike Company,	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32			
Turnpike Company,	February 24, 1851	12,000.00	25.00	7,200.00	3,054.00			
oad Company,	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37			
npikes and Roads,		$1,407,618.33		$847,163.33	$700,103.49		$12,600.54	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.,

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.
Coal River Navigation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00		
Guyandotte Navigation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00		
Monongalia Navigation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00		
Tug Fork Navigation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00		
Total, Navigation Companies,		$460,000.00		$239,000.00	$210,500.00		
Bridge companies, From March 19, 1823, to January 1, 1861.							
Buckhannon Bridge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00		
Cheat River Toll Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50	1853	$ 374.00
						1854	166.51
						Total,	$ 540.51
Elk River Bridge Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00	1857	$ 420.00
						1858	210.00
						1859	210.00
						1860	320.00
						Total,	$1,160.00
Fairmont and Palatine Bridge Company,	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00		
Guyandotte Bridge Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00		
Morgantown Bridge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00		
North Branch Bridge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00		
South Branch Bridge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00	1860	$ 378.00
Virginia and Maryland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00	1852	$ 600.00
						1853	600.00
						1854	250.00
						1855	300.00
						1856	600.00
						1857	200.00
						1858	550.00
						1859	450.00
						1860	400.00
						Total,	$3,950.00
Total, Bridge Companies,		$181,000.00		$79,800.00	$ 78,412.50		$6,028.51

MENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
gation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00			
igation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00			
igation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00			
ation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00			
ation Companies,		$460,000.00		$239,000.00	$210,500.00			
Bridge companies, From March 19, 1823, to January 1, 1861.								
dge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00			
l Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50	1853 1854	$ 374.00 166.51	
						Total,	$ 540.51	
e Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00	1857 1858 1859 1860	$ 420.00 210.00 210.00 320.00	
						Total,	$1,160.00	
latine Bridge Company,	" 12, 1850	20,000.00	25.00	15,000.00	15,000.00			
e Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00			
dge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00			
idge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00			
idge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00	1860	$ 378.00	
yland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00	1852 1853 1854 1855 1856 1857 1858 1859 1860	$ 600.00 600.00 250.00 300.00 600.00 200.00 550.00 450.00 400.00	
						Total,	$3,950.00	
e Companies,		$181,000.00		$79,800.00	$ 78,412.50		$6,028.51	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.,

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held S

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Amount.
Berkeley and Hampshire Turnpike Company, ... From Martinsburg, Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County, to some point on Northwestern road at or near French's Tavern in same County. Road estimated to be 49¾ miles in length, 3¾ miles of which run through Frederick County, Va., making 92.46% in West Virginia and 7.54% in Virginia.	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00		
Cross Roads and Summit Point Turnpike Company, ... From a point of intersection on the Charlestown and Berryville Turnpike at the cross road leading to Summit Point, to Summit Point depot, on the Winchester and Potomac railroad, in Jefferson County. The length of this road was reported as 5 miles, 690 yds. or 5.39 miles, of which 2½ miles, or 46.38% are estimated to be in Jefferson County, West Virginia.	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00		
Giles, Fayette and Kanawha Turnpike Company, ... From Fauer's Furnace, (above Kanawha Salt Works) by Falls of Kanawha and Vandal's in the Loop, to Giles Court House. The total length of this road was reported in 1841 as 134 miles, 17.5 chains, from which is deducted 7 miles, 54.8 chains which run over the Fincastle and Cumberland Gap Road, leaving 126 miles, 42.7 chains constructed by the Giles, Fayette and Kanawha Company, practically 126½ miles. Of this number of miles, 3 miles are estimated to be in Giles County, Va., (allowing for change in boundary) making West Virginia's proportion 97.62%. The reports of this company show total capital stock of $76,850.00 paid and unpaid, which is apparently $6,850.00 more than authorized.	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60		
Huntersville and Warm Springs Turnpike Company,..... From the Warm Springs in Bath County, to Huntersville in Pocahontas County. The length of this road was reported in 1834 as 26¼ miles. The first half mile ran over a turnpike already built which left 25¾ miles to be built. This is notwithstanding the fact that the distance by direct line was only 16½ miles. 5½ miles, or 21.36% is estimated as West Virginia's proportion. The road was destroyed in 1842 and 1843. In 1860 a new company was formed to which the State subscribed, but nothing was paid.	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24		

TEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Hampshire Turnpike Company, ... linsburg, Berkeley County, by way of Boyd's Gap and Gap in Hampshire County, to some point on Northwest- at or near French's Tavern in same County. ated to be 49¾ miles in length, 3¾ miles of which run rederick County, Va., making 92.46% in West Virginia and Virginia.	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00			
and Summit Point Turnpike Company, ... nt of intersection on the Charlestown and Berryville Turn- he cross road leading to Summit Point, to Summit Point the Winchester and Potomac railroad, in Jefferson County. of this road was reported as 5 miles, 690 yds. or 5.39 miles, 2½ miles, or 46.38% are estimated to be in Jefferson West Virginia.	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00			
and Kanawha Turnpike Company, ... r's Furnace, (above Kanawha Salt Works) by Falls of and Vandal's in the Loop, to Giles Court House. ngth of this road was reported in 1841 as 134 miles, 17.5 om which is deducted 7 miles, 54.8 chains which run over stle and Cumberland Gap Road, leaving 126 miles, 42.7 nstructed by the Giles, Fayette and Kanawha Company, 126½ miles. Of this number of miles, 3 miles are esti- be in Giles County, Va., (allowing for change in boundary) West Virginia's proportion 97.62%. of this company show total capital stock of $76,850.00 unpaid, which is apparently $6,850.00 more than author-	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60			
and Warm Springs Turnpike Company,..... Warm Springs in Bath County, to Huntersville in Poca- unty. of this road was reported in 1834 as 26¼ miles. The first ran over a turnpike already built which left 25¾ miles ilt. This is notwithstanding the fact that the distance line was only 16½ miles. 5½ miles, or 21.36% is esti- West Virginia's proportion. The road was destroyed in 1843. In 1860 a new company was formed to which the scribed, but nothing was paid.	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Amount.
Hardy and Winchester Turnpike Company, ... From Moorfield by way of Wardensville to within four miles of Winchester, with branch to Capon Springs. From reports this road, including the branch, is ascertained to be 61 miles in length, 41 miles of which, or 67.21% are estimated to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00		
Hillsborough and Harper's Ferry Turnpike Company, ... From Hillsborough, Loudoun County, to some point near the bridge across the Shenandoah river at Harper's Ferry, Jefferson County. The length of this road is reported as 10½ miles, of which ¼ mile, or 2.38% is ascertained to be in West Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00	1856	$ 240.00
Martinsburg and Winchester Turnpike Company, ... From Martinsburg, Berkeley County, to Winchester, Frederick County. This road is ascertained to be 22 miles in length, of which 13 miles, or 59.09% are found to be in West Virginia. Letters on file show that as late as in 1874 there was $1,300.00 on deposit at Winchester to the credit of this company. This was after West Virginia had released her part of the road to the County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00	1859 1860	803.27 405.00
						Total,	$1,208.27
Morgan and Frederick Turnpike Company, ... From Potomac River, opposite Hancock, to the North Frederick Grade in Frederick County. From reports the road is ascertained to be about 30 miles in length, of which 23 miles, or 73⅓% are estimated to be in Morgan County, West Virginia.	February 25, 1851	15,000.00	20.00	9,000.00	8,005.00		
[illegible] Lake and Salt Sulphur Springs Turnpike Company, ... From Salt Sulphur Springs, Monroe County, by way of Mountain Lake, Giles County, to Christiansburg, Montgomery County. Length of road 48 miles, 8 miles, or 16⅔% of which is in Monroe County, West Virginia.	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00		

NT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

rnal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
ster Turnpike Company, ... by way of Wardensville to within four miles of Winbranch to Capon Springs. From reports this road, branch, is ascertained to be 61 miles in length, 41 , or 67.21% are estimated to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00			
Harper's Ferry Turnpike Company, ... gh, Loudoun County, to some point near the bridge nandoah river at Harper's Ferry, Jefferson County. is road is reported as 10½ miles, of which ¼ mile, certained to be in West Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00	1856	$ 240.00	
Winchester Turnpike Company, ... g, Berkeley County, to Winchester, Frederick County. certained to be 22 miles in length, of which 13 miles, found to be in West Virginia. Letters on file show in 1874 there was $1,300.00 on deposit at Winchester f this company. This was after West Virginia had rt of the road to the County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00	1859 1860	803.27 405.00	
						Total,	$1,208.27	
rick Turnpike Company, ... iver, opposite Hancock, to the North Frederick Grade ounty. road is ascertained to be about 30 miles in length, of , or 73⅓% are estimated to be in Morgan County,	February 25, 1851	15,000.00	20.00	9,000.00	8,005.00			
d Salt Sulphur Springs Turnpike Company, ... r Springs, Monroe County, by way of Mountain Lake, to Christiansburg, Montgomery County. Length of 8 miles, or 16⅔% of which is in Monroe County,	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.
rth Frederick Turnpike Company, ... From a point at or near the house of Frederick B. Jenkins in Hampshire County, through Gainesborough to Winchester. The road was reported as 19¼ miles in length of which we estimate, exact location not being clear, 2¼ miles, or 11.68%, to be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,325.00	1857	$ 453.00
leigh and Wythe Line Turnpike Company, ... That portion of the Raleigh and North Carolina turnpike lying between the Giles, Fayette and Kanawha turnpike in Raleigh County and the county line of Wythe and Tazewell counties. This road is estimated to be 60 miles in length, 44 miles of which, or 73⅓%, are estimated to be in West Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00		
Total, turnpikes and roads, ...		$289,550.00		$165,400.00	$154,652.84		$1,901.27

MENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

ternal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Turnpike Company, ... at or near the house of Frederick B. Jenkins in Hampt, through Gainesborough to Winchester. The road was 9¼ miles in length of which we estimate, exact location ar, 2¼ miles, or 11.68%, to be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,325.00	1857	$ 453.00	
he Line Turnpike Company, ... f the Raleigh and North Carolina turnpike lying bees, Fayette and Kanawha turnpike in Raleigh County ty line of Wythe and Tazewell counties. stimated to be 60 miles in length, 44 miles of which, estimated to be in West Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00			
kes and roads, ...		$289,550.00		$165,400.00	$154,652.84		$1,901.27	

PARAGRAPH VII OF DECREE 820 K

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, E

Banks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

(From March 19, 1823, to January 1, 1861.)	Number of shares.	Par value of shares.	Dividends receive by Commonwealt Date.	Am
Northwestern Bank of Virginia, at Wheeling.				
Held by Commonwealth Fund,.....	2,918	$291,800.00	Regularly 1838-1860 on 2,918 shares,.....	$44
The Commonwealth Fund originally held 4,000 shares which were paid for as follows:				
Cash, ... $375,091.33				
Net dividends and interest..... 24,908.67				
4,000 shares at $100.00 per share, ... $400,000.00				
1857 the Commonwealth sold 1,082 shares for $113,671.42 and turned this amount over to the Sinking Fund.				
Held by Literary Fund,.....	500	$ 50,000.00	Regularly 1835-1860 both inclusive except 1843,.....	$ 8
Purchased in 1832.				
Total, Northwestern Bank stock, January 1, 1861,.....	3,418	$341,800.00	Total.....	$534,
Fairmont Bank, (Marion County)				
Held by Literary Fund,.....	1,000	$ 50,000.00	1860.....	$ 2,
Purchased in 1860.				

EMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Banks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

(From March 19, 1823, to January 1, 1861.)		Number of shares.	Par value of shares.	Dividends received by Commonwealth. Date.	Amount.	Value chargeable to West Virginia.
stern Bank of Virginia, at Wheeling.						
nonwealth Fund,		2,918	$291,800.00	Regularly 1838-1860 on 2,918 shares,	$445,315.16	
mmonwealth Fund originally held 4,000 shares which were paid for as follows:						
	$375,091.33					
nds and interest	24,908.67					
res at $100.00 per share,	$400,000.00					
mmonwealth sold 1,082 shares for $113,671.42 and turned this amount over to the Sinking Fund.						
ry Fund, 1832.		500	$ 50,000.00	Regularly 1835-1860 both inclusive except 1843,	$ 89,500.00	
stern Bank stock, January 1, 1861,		3,418	$341,800.00	Total,	$534,815.16	
, (Marion County)						
terary Fund, in 1860.		1,000	$ 50,000.00	1860	$ 2,000.00	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

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	Number of shares.	Par value of shares.	COST			
			Expended through the Commonwealth Fund.	Expended through the Internal Improvement Fund.	Expended through the Sinking Fund.	Total cost.
Expenditures by the Commonwealth, ... For construction work and improvements on the James River Canal, Blue Ridge Canal and Kanawha road and river which were turned over to the James River and Kanawha Company for 10,000 shares of capital stock of that company in accordance with act passed March 16, 1832. (P. 73.)	10,000	$1,000,000.00		$1,216,666.30		$1,216,666.30
Capital Stock of James River and Kanawha Company, ... Received in part payment of cost of Blue Ridge Canal Turnpike in accordance with act passed February 25, 1833, (P. 57). The balance of the cost of this turnpike, viz: $58.80, was paid to the State in cash by the James River and Kanawha Company.	92	9,200.00		9,200.00		9,200.00
Expenditures by the Commonwealth, ... On account of subscriptions to capital stock.	19,908	1,990,800.00		1,990,800.00		1,990,800.00
State bonds issued in accordance with the act passed March 23, 1860, .. (P. 113). In exchange for a similar amount of capital stock.	2,000	200,000.00		200,000.00		200,000.00
	32,000	$3,200,000.00		$3,416,666.30		$3,416,666.30
Capital stock issued to the Commonwealth on account of the items below,	72,000	$7,200,000.00				
Expenditures on account of interest on guaranteed bonds and annuity to stockholders of the James River Company; deducting from the latter, the amount of the annuity repaid to the Commonwealth by the James River and Kanawha Company, ...			$695,542.66	$145,670.45	$181,202.80	$1,022,415.91
Cash loans, ...				890,000.00		890,000.00
Principal amount required to produce annually, at six per cent, the sum of $21,000.00, guaranteed forever to the stockholders of the James River Company, by the act of March 23, 1860, ...				350,000.00		350,000.00
Cash loans to the Richmond Dock Company by the Board of Public Works, transferred to the Commonwealth Fund; being a part of the debt amounting to $94,128.96, so transferred, ...			12,500.00			12,500.00
The said debt became a liability of the James River and Kanawha Company through its purchase of the Richmond Dock Company, and is as below:—						
Loan of Bank of Virginia stock, ... $ 37,500.00						
Cash, ... 12,500.00						
Total, ... $ 50,000.00						
Premium on the above stock, ... 4,078.12						
Total, ... $ 54,078.12						
Interest on $54,078.12, ... 33,714.69						

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.,

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

			COST			
	Number of shares.	Par value of shares.	Expended through the Common-wealth Fund.	Expended through the Internal Improvement Fund	Expended through the Sinking Fund.	Total cost.
Capital Stock issued to the Commonwealth, (Continued.)						
Bonds of the State loaned to the James River and Kanawha Company:						
As per act passed March 25, 1842, ... $ 250,000.00						
" " " " " 1, 1847, ... 1,236,000.00						
" " " " January 25, 1850, ... 110,000.00				$1,596,000.00		$1,596,000.00
Bonds of the James River and Kanawha Company: Guaranteed by the State and assumed in accordance with the act of March 23, 1860:						
As per act passed March 23, 1839, ... $1,400,000.00						
" " " " " 9, 1849 ..... 350,000.00						
" " " " " 12, 1849, ... 150,000.00						
" " " " " 15, 1850, ... 360,000.00				$2,260,000.00		$2,260,000.00
Total amount due the Commonwealth and capital stock issued therefor, in accordance with the act passed March 23, 1860, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMPANY.

Account of construction and subscription to capital stock, ...	32,000	$ 3,200,000.00		$3,416,666.30		$3,416,666.30
Account of debt due the Commonwealth, guaranteed bonds and annuity assumed, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181.202.80	$6,130,915.91
Total, ...	104,000	$10,400,000.00	$708,042.66	$8,658,336.75	$181,202.80	$9,547,582.21

Par value of the stock of the James River and Kanawha Company owned by the Commonwealth on January 1, 1861, and the cost thereof in cash from March 19, 1823, to January 1, 1861, excluding the Bank of Virginia stock, referred to above, and all interest due the Commonwealth at March 23, 1860.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be correct as to the amount and that they represent expenditures by the Commonwealth of Virginia for the purposes indicated.

Certified Correct:
ARTHUR G. POTTER.

PRICE WATERHOUSE & CO.,
For the Plaintiff.

Of the total capital investment of the James River a pany as reported by that Company at September 3 located in West Virginia.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS E
Fo

ENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

			COST				Dividends received by Commonwealth	
	Number of shares.	Par value of shares.	Expended through the Commonwealth Fund.	Expended through the Internal Improvement Fund	Expended through the Sinking Fund.	Total cost.	Date	Amount.
ed to the Commonwealth, (Continued.)								
tate loaned to the James River and Kanawha								
passed March 25, 1842,.....$ 250,000.00								
" " 1, 1847, ... 1,236,000.00								
" January 25, 1850, ... 110,000.00				$1,596,000.00		$1,596,000.00		
mes River and Kanawha Company:								
the State and assumed in accordance with March 23, 1860:								
passed March 23, 1839,.....$1,400,000.00								
" " 9, 1849 ..... 350,000.00								
" " 12, 1849, ... 150,000.00								
" " 15, 1850, ... 360,000.00				$2,260,000.00		$2,260,000.00		
due the Commonwealth and capital stock , in accordance with the act passed March 23, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91		$10,092.00

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMPANY.

ction and subscription to capital stock,.....	32,000	$ 3,200,000.00		$3,416,666.30		$3,416,666.30		
due the Commonwealth, guaranteed bonds and annuity	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181.202.80	$6,130,915.91		
.....	104,000	$10,400,000.00	$708,042.66	$8,658,336.75	$181,202.80	$9,547,582.21		

the stock of the James River and Kanawha Company e Commonwealth on January 1, 1861, and the cost there- om March 19, 1823, to January 1, 1861, excluding the Bank tock, referred to above, and all interest due the Common- larch 23, 1860.

Of the total capital investment of the James River and Kanawha Company as reported by that Company at September 30, 1860, 3.49% was located in West Virginia.

lined the figures contained in this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be amount and that they represent expenditures by the Commonwealth of Virginia for the purposes

Certified Correct:
CLIFFORD E. SCOVILLE.

rect:
UR G. POTTER.

PRICE WATERHOUSE & CO.,
For the Plaintiff.

THOMAS BIRD DIXCY,
For the Defendant.

EXHIBIT "WEST VA. 1."

Table showing value of Real and Personal Property in Virginia and West Virginia by Counties as returned by Individuals on the first day of June, 1860, and published in "Miscellaneous Statistics, Census Reports 1860" and value of Real and Personal Property as assessed in 1860.

VIRGINIA.

	Counties.	Census Valuation. Real.	Personal.	Total.	Assessed Valuation. Real.	Personal.	Total.
1	Accomack	$ 4,995,240	$ 5,045.355	$ 10,040,595	$ 3,007,903	$ 1,353,505	$ 4,361,408
2	Albemarle	11,112,279	16,124,021	27,236,300	7,465,975	2,716,944	10,182,919
3	Alexandria	4,762,885	2,649,798	7,412,683	4,246,781	816,186	5,262,967
4	Alleghany	1,502,967	1,653,271	3,156,238	876,648	355,465	1,232,113
5	Amelia	2,773,986	7,188,874	9,962,860	518,775	979,016	1,497,791
6	Amherst	3,212,791	5,686,935	8,899,726	363,643	761,320	1,124,963
7	Appomattox	2,135,636	4,929,131	7,064,767	1,510,990	661,245	2,172,235
8	Augusta	13,850,776	10,113,154	23,963,930	10,374,078	3,390,421	13,764,499
9	Bath	1,891,129	1,128,427	3,019,556	1,035,854	425,836	1,461,690
10	Bedford	7,661,370	12,012,616	19,673,986	4,915,177	2,115,884	7,031,061
11	Botetourt	4,223,734	4,549,414	8,773,148	3,065,042	1,044,030	4,109,072
12	Brunswick	2,639,337	9,395,528	12,024,865	1,576,811	1,412,920	2,989,731
13	Buchanan	128,946	100,081	229,027	222,498	81,548	304,046
14	Buckingham	4,187,520	8,421,168	12,608,688	2,416,045	943,428	3,359,473
15	Campbell	8,318,593	16,182,897	24,501,490	5,918,121	2,436,766	8,354,887
16	Caroline	4,821,539	9,894,510	14,716,049	3,442,667	1,460,978	4,903,645
17	Carroll	1,037,626	793,039	1,830,665	1,708,695	291,606	2,000,301
18	Charles City	1,457,472	2,439,864	3,897,336	1,025,610	405,600	1,431,210
19	Charlotte	4,558,899	9,150,516	13,709,415	3,377,079	1,562,782	4,939,861
20	Chesterfield	4,148,519	8,379,685	12,528,204	4,458,984	1,098,072	5,557,056
21	Clarke	3,987,176	3,314,612	7,301,788	3,847,756	748,762	4,596,518
22	Craig	1,060,150	705,693	1,765,843	880,927	262,376	1,143,303
23	Culpeper	5,541,402	6,425,009	11,966,411	3,268,892	928,245	4,197,137
24	Cumberland	2,804,763	7,128,849	9,933,612	2,132,623	937,357	3,069,980
25	Dinwiddie	8,592,624	18,426,290	27,018,914	2,572,589	804,161	3,376,750
26	Elizabeth City	2,390,730	3,244,275	5,635,005	1,041,912	351,365	1,393,277
27	Essex	3,546,912	6,217,528	9,764,440	2,078,259	1,062,457	3,140,716
28	Fairfax	4,071,772	3,285,394	7,357,166	4,414,990	804,195	5,219,185
29	Fauquier	13,308,772	14,052,831	27,361,603	9,262,040	2,578,876	11,840,916
30	Floyd	1,394,658	1,014,772	2,409,430	890,798	305,154	1,195,952
31	Fluvanna	2,793,206	4,987,111	7,780,317	2,151,850	801,182	2,953,032
32	Franklin	3,937,007	6,649,915	10,586,922	2,459,612	1,237,755	3,697,367
33	Frederick	6,711,276	5,168,807	11,880,083	5,728,035	1,754,088	7,482,123
34	Giles	1,973,839	1,501,936	3,475,775	1,204,623	390,735	1,595,358
35	Gloucester	2,515,586	5,089,983	7,605,569	1,924,336	723,846	2,648,182
36	Goochland	2,773,956	5,231,626	8,005,582	2,626,997	882,985	3,509,982
37	Grayson	1,450,756	1,090,911	2,541,667	1,036,652	279,337	1,315,989
38	Greene	1,175,083	1,964,685	3,139,768	955,333	371,965	1,327,298
39	Greensville	1,322,139	3,946,766	5,268,905	820,967	438,350	1,259,317
40	Halifax	7,444,875	14,759,675	22,204,550	5,202,597	2,636,968	7,839,565
41	Hanover	5,191,947	8,463,651	13,655,598	3,204,975	1,408,020	4,612,995
42	Henrico	27,494,537	29,527,908	57,022,445	10,108,513	1,425,038	11,533,551
43	Henry	2,260,965	3,335,553	5,596,518	1,796,238	845,159	2,641,397
44	Highland	1,590,967	1,010,183	2,601,150	1,308,003	314,790	1,622,793
45	Isle of Wight	1,788,975	3,437,216	5,226,191	1,380,501	821,558	2,202,059
46	James City	1,850,822	2,042,825	3,893,647	1,097,809	543,817	1,641,626
47	King George	1,870,093	3,709,367	5.579,460	1,545,465	478,874	2,024,339
48	King and Queen	2,439,834	5,113,472	7.553.307	1,752,784	912,999	2,665,783
49	King William	2,642,081	3,581,000	6,223,081	1,613,712	423,670	2,037,382
50	Lancaster	1,117,950	2,422,280	3.540,230	977,843	313,610	1,291,453
51	Lee	3,322,134	1,152,575	4.474,709	1,690,706	699,153	2,389,859
52	Loudoun	12,545,236	8,626,701	21,171.937	11,647,933	3,590,444	15,238,377
53	Louisa	4,873,166	9,873,828	14.746,994	3,522,707	1,618,875	5,141,582
54	Lunenburg	2,424,820	7,890,000	10,314,820	1,595,692	926,401	2,522,093
55	Madison	2,998,827	4,532,680	7,531,507	346,035	1,156,079	1,502,114

EXHIBIT "WEST VA. 1."—Continued.

	Counties.	Census Valuation Real.	Census Valuation Personal.	Census Valuation Total.	Assessed Valuation. Real.	Assessed Valuation. Personal.	Assessed Valuation. Total.
56	Mathews	1,757,390	3,056,300	4,813,690	762,967	327,884	1,090,851
57	Mecklenburg	4,586,376	12,090,434	16,676,810	3,557,893	1,553,038	5,110,931
58	Middlesex	1,139,736	1,785,685	2,925,421	867,120	324,513	1,191,633
59	Montgomery	4,194,920	3,401,695	7,596,615	2,719,418	753,910	3,473,328
60	Nansemond	2,599,260	4,755,286	7,354,546	1,736,079	1,005,005	2,741,084
61	Nelson	4,891,200	7,302,350	12,193,550	2,703,798	569,377	3,273,175
62	New Kent	1,272,193	2,208,500	3,480,693	926,259	320,945	1,247,204
63	Norfolk	12,101,493	16,826,963	28,928,456	2,385,437	654,166	3,039,603
64	Northampton	2,684,215	3,627,370	6,311,585	1,399,412	680,755	2,080,167
65	Northumberland	2,113,596	3,015,921	5,129,517	1,217,535	426,450	1,643,985
66	Nottoway	2,196,624	6,290,373	8,486,997	2,130,397	854,721	2,985,118
67	Orange	4,512,173	6,624,073	11,136,246	2,766,285	779,770	3,546,055
68	Page	2,678,627	1,799,098	4,477,725	2,133,476	867,587	3,001,063
69	Patrick	1,340,378	2,434,757	3,775,135	1,205,807	527,418	1,733,225
70	Pittsylvania	8,012,555	14,393,348	22,405,903	4,732,416	2,104,221	6,836,697
71	Powhatan	3,175,391	5,631,415	8,806,806	1,953,165	789,892	2,743,057
72	Prince Edward	3,271,213	7,070,474	10,341,687	2,285,055	1,035,329	3,320,384
73	Prince George	2,587,427	4,669,906	7,257,333	1,893,012	787,372	2,680,384
74	Prince William	2,483,400	2,822,626	5,306,026	2,623,791	615,710	3,239,501
75	Princess Ann	1,896,283	2,644,733	4,541,016	1,517,555	562,412	2,079,967
76	Pulaski	2,394,823	2,061,003	4,455,826	1,788,247	765,562	2,553,809
77	Rappahannock	3,074,234	3,720,086	6,794,320	2,702,427	566,869	3,269,296
78	Richmond	1,291,762	1,904,200	3,195,962	1,051,725	361,865	1,413,590
79	Roanoke	3,667,544	3,107,012	6,774,556	2,993,909	879,608	3,873,517
80	Rockbridge	8,290,943	6,170,188	14,461,131	5,269,845	1,991,103	7,260,948
81	Rockingham	10,359,061	6,726,645	17,085,706	8,376,379	2,855,817	11,232,196
82	Russell	3,074,424	1,964,275	5,038,699	1,534,917	628,823	2,163,740
83	Scott	2,112,226	1,284,937	3,397,163	1,261,070	668,486	1,929,556
84	Shenandoah	5,174,207	2,983,918	8,158,125	4,505,626	1,408,912	5,914,538
85	Smyth	2,604,565	1,736,291	4,340,856	2,350,760	502,340	2,853,100
86	Southampton	1,993,011	4,300,346	6,293,357	1,536,733	1,347,193	2,883,926
87	Spotsylvania	4,511,301	9,221,483	13,732,784	3,686,404	1,764,799	5,451,203
88	Stafford	1,950,860	4,024,249	5,975,109	1,702,946	478,025	2,180,971
89	Surry	1,211,927	3,125,621	4,337,548	872,609	348,872	1,221,481
90	Sussex	1,724,989	6,617,752	8,342,741	1,042,099	801,725	1,843,824
91	Tazewell	3,105,251	2,101,677	5,206,928	2,040,822	566,828	2,607,650
92	Warwick	359,451	619,482	978,933	453,539	80,085	533,624
93	Warren	2,347,585	2,316,126	4,663,711	2,084,297	548,143	2,632,440
94	Washington	5,327,245	4,409,650	9,736,895	4,395,420	1,290,488	5,685,908
95	Westmoreland	1,837,762	2,583,458	4,421,220	1,363,055	347,612	1,710,667
96	Wise	522,425	346,735	869,160	393,636	148,505	542,141
97	Wythe	4,677,230	2,877,144	7,554,374	3,354,501	1,143,261	4,497,762
98	York	756,320	1,216,200	1,972,520	897,569	215,671	1,113,240
		$384,453,876	$532,633,947	$917,087,823	$294,168,822	$101,736,704	$395,905,526

EXHIBIT "WEST VA. 1."—Continued.

WEST VIRGINIA.

	Counties.	Census Valuation. Real.	Personal.	Total.	Assessed Valuation. Real.	Personal.	Total.
1	Barbour	$ 2,372,090	$ 775,896	$ 3,147,986	$ 1,428,352	$ 516,950	$ 1,945,302
2	Berkeley	5,107,801	2,343,268	7,451,069	5,221,496	797,998	6,029,494
3	Boone	507,032	376,589	883,621	501,364	187,680	689,044
4	Braxton	990,383	418,230	1,408,613	931,716	289,434	1,221,150
5	Brooke	3,040,949	1,480,677	4,521,626	1,015,751	407,487	1,423,238
6	Cabell	2,225,160	1,137,091	3,362,251	1,981,994	605,462	2,587,456
7	Calhoun	392,097	116,665	508,762	319,861	55,955	375,816
8	Clay	183,854	88,338	272,192	258,802	52,440	311,242
9	Doddridge	1,039,599	328,092	1,367,691	758,970	165,220	924,190
10	Fayette	1,364,206	585,205	1,947,411	909,019	219,158	1,128,177
11	Gilmer	783,082	338,013	1,121,095	777,532	161,522	939,054
12	Greenbrier	6,724,245	3,609,556	10,333,801	3,511,292	1,809,005	5,320,297
13	Hampshire	4,317,428	2,586,420	6,903,848	3,958,442	1,082,218	5,040,660
14	Hancock	2,310,024	1,012,557	3,322,581	962,469	262,221	1,224,690
15	Hardy	3,563,232	2,289,434	5,852,666	2,946,309	942,419	3,888,728
16	Harrison	5,035,595	2,473,447	7,509,042	3,841,669	1,083,482	4,925,151
17	Jackson	1,597,727	446,024	2,043,751	1,605,007	294,986	1,899,993
18	Jefferson	7,519,196	4,717,786	12,236,982	6,786,097	1,910,687	8,696,784
19	Kanawha	3,264,375	2,750,530	6,014,905	3,803,359	720,969	4,524,328
20	Lewis	2,384,629	862,546	3,247,175	1,424,843	432,826	1,857,669
21	Logan	655,697	434,685	1,090,382	388,650	239,785	628,435
22	McDowell	102,876	41,565	144,441	159,686	31,138	190,824
23	Marion	3,350,079	1,360,093	4,710,172	2,721,173	717,028	3,438,201
24	Marshall	3,700,576	1,170,092	4,870,668	2,422,094	340,471	2,762,565
25	Mason	2,717,393	1,156,457	3,873,850	2,757,149	548,385	3,305,534
26	Mercer	1,487,427	831,916	2,319,343	679,256	279,050	958,306
27	Monongalia	3,535,232	1,360,800	4,896,032	3,038,051	1,067,084	4,105,135
28	Monroe	4,665,886	3,123,403	7,789,289	3,384,469	1,408,522	4,792,991
29	Morgan	730,967	371,688	1,102,655	741,555	186,232	927,787
30	Nicholas	1,552,470	1,011,240	2,533,710	850,699	264,084	1,114,783
31	Ohio	8,509,524	4,400,512	12,910,036	5,021,349	817,560	5,838,909
32	Pendleton	1,662,607	920,447	2,583,054	1,100,237	523,324	1,623,561
33	Pleasants	680,381	151,152	831,533	584,444	129,035	713,479
34	Pocahontas	1,880,904	1,027,004	2,907,908	1,184,314	436,121	1,620,435
35	Preston	2,612,010	1,460,721	4,072,731	1,671,766	679,170	2,350,936
36	Putnam	1,582,360	1,104,255	2,686,615	1,076,081	299,725	1,175,806
37	Raleigh	552,940	264,256	817,196	521,252	125,355	646,607
38	Randolph	1,747,089	642,608	2,389,697	1,364,590	306,617	1,671,207
39	Ritchie	1,465,987	632,404	2,098,391	1,322,142	261,832	1,583,974
40	Roane	697,115	149,316	846,431	606,217	158,731	724,948
41	Taylor	1,837,933	858,845	2,696,778	1,256,488	361,874	1,618,362
42	Tucker	287,555	94,374	381,929	371,080	77,679	448,759
43	Tyler	1,770,848	762,994	2,533,842	914,502	308,533	1,223,038
44	Upshur	1,834,475	768,691	2,603,136	1,333,164	401,914	1,735,078
45	Wayne	1,014,831	511,471	1,526,302	1,027,443	363,127	1,390,570
46	Webster	204,316	54,690	259,006	83,401	21,554	104,955
47	Wetzel	1,111,952	463,534	1,575,486	866,500	190,611	1,057,111
48	Wirt	550,673	228,449	779,122	515,227	110,893	626,120
49	Wood	2,881,249	1,287,397	4,168,646	2,578,846	683,030	3,261,876
50	Wyoming	338,395	272,981	611,376	292,121	121,083	413,204
		$110,444,451	$55,652,404	$166,096,855	$ 83,778,290	$ 23,457,666	$107,235,956

EXHIBIT "WEST VIRGINIA 2."

Table showing slave population, by counties, in Virginia in 1860, over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in Virginia in 1860.

	County.	Under 12.	Over 12.	Total.	Slaves assessed as over 12.
1.	Accomack	1,601	2,906	4,507	2,645
2.	Albemarle	5,234	8,682	13,916	7,469
3.	Alexandria	383	1,003	1,386	709
4.	Allegheny	271	729	990	589
5.	Amelia	2,903	4,752	7,655	4,269
6.	Amherst	2,316	3,962	6,278	3,211
7.	Appomattox	2,505	2,095	4,600	2,444
8.	Augusta	2,086	3,530	5,616	2,967
9.	Bath	373	573	946	475
10.	Bedford	3,728	6,448	10,176	5,303
11.	Botetourt	1,031	1,738	2,769	1,728
12	Brunswick	3,442	5,704	9,146	5,209
13.	Buchanan	15	15	30	144
14.	Buckingham	3,270	5,541	8,811	4,827
15.	Campbell	3,953	7,627	11,580	6,754
16.	Caroline	3,975	6,697	10,672	6,029
17.	Carroll	98	164	262	127
18.	Charles City	976	1,971	2,947	1,783
19.	Charlotte	3,402	5,836	9,238	5,489
20.	Chesterfield	2,852	5,502	8,354	4,733
21.	Clarke	1,255	2,120	3,375	1,834
22.	Craig	199	221	420	215
23.	Culpeper	2,559	4,116	6,675	3,245
24.	Cumberland	2,358	4,347	6,705	3,899
25.	Dinwiddie	3,904	8,870	12,774	3,918
26.	Elizabeth City	877	1,540	2,417	1,273
27.	Essex	2,441	4,255	6,696	3,921
28.	Fairfax	1,154	1,962	3,116	1,607
29.	Franklin	4,022	6,433	10,455	5,025
30.	Floyd	199	276	475	224
31.	Fluvanna	1,885	3,109	4,994	981
32.	Franklin	2,607	3,744	6,351	2,877
33.	Frederick	831	1,428	2,259	1,174
34.	Giles	271	507	778	444
35.	Gloucester	2,166	3,570	5,736	3,038
36.	Goochland	2,251	3,888	6,139	8,696
37.	Grayson	215	332	547	280
38.	Greene	791	1,193	1,984	3,507
39.	Greenville	1,598	2,569	4,167	2,213
40.	Halifax	5,711	9,186	14,897	2,678
41.	Hanover	3,650	5,833	9,483	4,984
42.	Henrico	6,794	13,247	20,041	4,462
43.	Henry	2,119	2,899	5,018	3,065
44.	Highland	153	299	402	208
45.	Isle of Wight	1,227	2,343	2,570	2,077
46.	James City	819	1,767	2,586	1,546
47.	King George	1,320	2,350	3,673	2,066
48.	King and Queen	2,362	3,777	6,139	2,916
49.	King William	1,874	3,651	5,525	3,288
50.	Lancester	1,100	1,769	2,869	1,605
51.	Lee	348	476	824	486
52.	Loudoun	2,029	3,472	5,501	5,429

53.	Louisa	3,921	6,273	10,194	4,163
54.	Lunenburg	2,785	4,520	7,305	2,408
55.	Madison	1,654	2,743	4,397	7,392
56.	Matthews	1,117	2,991	3.008	1.507
57.	Mecklenburg	4,507	7,913	12,420	3,215
58.	Middlesex	915	1,460	2,375	1.526
59.	Montgomery	862	1,357	2,219	1,141
60.	Nansemond	1,817	3,664	5,481	2,571
61.	Nelson	2,200	4,038	6,238	3,856
62.	New Kent	1,534	1,840	3,374	1,780
63.	Norfolk	2,608	6,396	9,004	1,997
64.	Northampton	1,341	2,531	3,872	2,213
65.	Northumberland	1,334	2,105	3,439	1,733
66.	Nottoway	2,304	4,164	6,468	3,309
67.	Orange	2,390	3,721	6,111	1,026
68.	Page	346	504	850	495
69.	Patrick	1,000	1,070	2,070	8,180
70.	Pittsylvania	5,455	8,885	14,340	8,180
71.	Powhatan	1,995	3,408	5,403	3,177
72.	Prince Edward	2,546	4,795	7,341	4,352
73.	Prince George	1,729	3,268	4,997	2,894
74.	Prince William	926	1,430	2,356	1,269
75.	Princess Anne	1,139	2,047	3,186	1,818
76.	Pulaski	623	966	1,589	918
77.	Rappahannock	1,382	2,138	3,520	1,721
78.	Richmond	904	1,562	2,466	1,373
79.	Roanoke	955	1,688	2,643	1,603
80.	Rockbridge	1,543	2,442	3,985	2,328
81.	Rockingham	912	1,475	2,387	1,268
82.	Russell	466	633	1,099	516
83.	Scott	150	340	490	324
84.	Shenandoah	237	517	753	484
85.	Smyth	326	711	1,037	508
86.	Southampton	1,815	3,593	5,408	3,174
87.	Spottsylvania	2,920	4,866	7,786	4,106
88.	Stafford	1,267	2,047	3,314	1,575
89.	Surry	837	1,678	2,515	1,552
90.	Sussex	3,327	4,057	6,384	3,604
91.	Tazewell	523	679	1,202	676
92.	Warwick	331	688	1,019	602
93.	Warren	588	987	1,575	804
94.	Washington	950	1,597	2,547	1,319
95.	Westmoreland	1,394	2,307	3,704	2,088
96.	Wise	29	37	66	34
97.	Wythe	824	1,338	2,162	1,116
98.	York	697	1,228	1,925	999
	Total	173,851	298,643	472,494	262,617

EXHIBIT "WEST VIRGINIA 3."

Table showing slave population, by counties, in West Virginia in 1860, over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in West Virginia in 1860.

	County.	Under 12.	Over 12.	Total.	Slaves assessed as over 12.
1.	Barbour	22	73	95	68
2.	Berkeley	586	1,064	1,650	911
3.	Boone	57	101	158	86
4.	Braxton	46	58	104	54
5.	Brooke	5	13	18	5
6.	Cabell	110	195	305	216
7.	Calhoun	2	7	9	6
8.	Clay	10	11	21	12
9.	Doddridge	13	21	34	17
10.	Fayette	105	166	271	127
11.	Gilmer	15	37	52	21
12.	Greenbrier	532	993	1,525	996
13.	Hampshire (See * below)	434	779	1,213	729
14.	Jackson	12	43	55	42
15.	Jefferson	1,460	2,500	3,960	2,256
16.	Kanawha	769	1,415	2,184	1,238
17.	Lewis	86	144	230	103
18.	Logan	61	87	148	192
19.	Marion	14	49	63	46
20.	Marshall	3	26	29	20
21.	Mason	143	233	376	200
22.	Mercer	151	211	362	70
23.	Monongalia	26	75	101	69
24.	Monroe	423	691	1,114	611
25.	Morgan	38	56	94	60
26.	Nicholas	56	98	154	85
27.	Ohio	25	75	100	23
28.	Pendleton	95	149	244	138
29.	Pleasants	4	11	15	7
30.	Pocahontas	94	158	252	148
31.	Preston	23	44	67	41
32.	Putnam	232	348	580	353
33.	Raleigh	19	38	57	28
34.	Randolph	52	131	183	107
35.	Ritchie	14	24	38	12
36.	Roane	31	41	72	35
37.	Taylor	33	79	112	68
38.	Tucker	4	16	20	17
39.	Tyler	5	13	18	7
40.	Upshur	68	144	212	97
41.	Wayne	45	98	143	74
42.	Wetzel	1	9	10	8
43.	Wirt	5	18	23	17
44.	Wood	68	108	176	82
45.	Wyoming	22	42	64	36
46.	Webster *	0	3	3	0
47.	Hancock	0	2	2	1
48.	Hardy	381	692	1,073	645
49.	Harrison	220	362	582	292
50.	(McDowell not given.)				
	Total	6,620	11,751	18,371	10,476

Other Evidence and Proceedings Relating to Paragraph VII of the Decree.

[*Vol. 1. Nov. 16, 1909. Direct Examination of A. G Potter.*]

TESTIMONY ON BEHALF OF THE COMPLAINANT.
under Paragraph 7 of the Decree.

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ARTHUR G. POTTER,
testified as follows:

Mr. Anderson: The statements we have filed in response to the seventh paragraph of the decree are necessarily incomplete, and to some extent tentative. There are certain facts we had hoped to be able to ascertain upon examination of records in West Virginia, where I went personally, accompanied by Mr. Potter and Mr. Robinson and Mr. Lightfoot, and they made careful investigations there. The officials of West Virginia turned over to us all the records which were accessible or which could be found in the State library and in the public offices of the government of West Virginia at Charleston; but the first General Assembly of the Government of West Virginia at Wheeling authorized Governor Pierpont to turn these records over to the new Governor of West Virginia, upon the understanding that whenever called for by Virginia, they were to be returned to Virginia. They have not been returned, and until they are returned we cannot make complete answers to this direction of the decree. I want to say, however, that it is not so important to have these records as it was at one time believed to be. We can file this statement with the understanding that it is tentative and incomplete.

The Special Master: Then as I understand, you offer Plaintiff's Exhibit G-1 with the understanding that you may later desire to supplement it with more complete proof of the Plaintiff's case under that item?

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Mr. Spooner: If it cannot be supplemented, it is not good, is it?

Mr. Anderson: We want to make additions to it, that is all. We will lose if we are not able to do it.

The Special Master: That is, in presenting this, you do not wish to be understood as conceding that this is all that you are entitled to

recover on that branch of the case, but you reserve the right to put in additional evidence if you are able to obtain it?

Mr. Anderson: If we are able to obtain it.

The Special Master: I see no objection to that.

[See in testimony under Paragraph 2, at page —— of this volume, reference to matter following through indented page 81.]

By Mr. Spooner:

Q. Did you ascertain, during the progress of your investigation, the number of square miles in the Commonwealth of Virginia in 1861?

A. We took that from the report of the Auditor of Public Accounts.

Q. What did you ascertain to be the area in square miles of Virginia in 1861?

A. It is shown in that Schedule No. 2—number of square miles in Virginia, 48,951.

Q. Oh, no; not in 1861. I mean the area of Virginia before she was divided.

A. Before she was divided? Total, 94,488 square miles.

Mr. Anderson: I think that is excessive, but that was the estimate. I suppose it was reached, Senator, by reason of the fact that —

By Mr. Spooner:

Q. Where did you get that? 81

A. From the auditor's report of 1861.

By the Special Master:

Q. What is that; the report giving the list of counties in detail and the area of each county?

A. Yes, sir.

Q. You took the county items and made the aggregate?

A. As per the certificate of the County Surveyors.

By Mr. Harrison:

Q. That was in the Auditor's report of the State of Virginia for 1861?

A. I believe the book is marked, "Reports of 1861."

Q. And that information in detail is given by the Auditor in that report?

A. Yes, sir.

Q. By counties?

A. Yes, sir.

By Mr. Spooner:

Q. Vacant lands that were assessed?

A. I paid no attention to vacant lands that were assessed.

Mr. Anderson: If he had, Senator, it would have been a great deal larger, in all probability, because the same tract of land was sometimes assessed three or four times.

The Special Master: Anything further, Mr. Anderson?

By Mr. Anderson:

Q. State what you know about this statement, "Plaintiff's Exhibit G-1." From what sources was that information compiled.

The Special Master: That is, what were the original sources of your information? 82

Mr. Anderson: Yes, sir.

A. With respect to schedules 1, 2 and 3 under this article, the information was taken from the Auditor's reports of West Virginia, consulted in the library at Charleston. The schedules here show the source of the information.

Q. What are the facts as to the correctness of that statement, as far as it goes, and so far as it comes within your knowledge?

A. The various figures that I have taken off are merely copies from those books. I do not know anything about the accuracy of them, because there was no opportunity for verifying them. I merely know the copies are right, to the best of my knowledge and belief.

Q. They are copies of the public reports of the Auditor of West Virginia?

A. Yes, sir.

The Special Master: File that, please, and let it be marked by the stenographer.

(The paper referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Summary of Property, Stocks and Credits received by West Virginia under Article VII." is filed herewith, marked "Plaintiff's Exhibit G-1.")

Mr. Harrison: Do you gentlemen want to examine Mr. Potter about this exhibit?

By the Special Master:

Q. Can you state where you got the information in Schedule 5—stock in the Merchants & Mechanics Bank of Wheeling? 83

A. The last page shows that under Section 20 of the Act of March 7, 1834, the Commonwealth of Virginia received from the Merchants

& Mechanics Bank of Wheeling a stock bonus amounting to $40,000.

Q. Then you got that from an act of the Legislature?

A. Yes, sir.

Mr. Spooner: Have you detailed statements to support this exhibit G 1?

Mr. Robinson: We have no details to support that?

Mr. Spooner: Why not?

A. This contains all the detail we could find.

Mr. Robinson: That is all the detail we have.

The Special Master: As I understand Mr. Potter, he found the items upon which he predicates items 1, 2 and 3 in the public reports of West Virginia, and he took those items and assumed them to be correct.

By Mr. Spooner:

Q. Will you indicate the reports where you got that information?

A. The introductory paragraph of this first schedule, Schedule 1, says:

"In a letter in 'Auditor's reports, House Journal 1862-3,' dated Wheeling, July 14th, 1863, from S. P. Hildreth, Treasurer, to Governor Pierpont, he reports having made an examination of what we take to be the books of the Restored State.

The second one also refers to that. The third one refers to a number of annual reports, giving the table and page number 84 in the annual reports of the Auditor of West Virginia as far up as 1872. It has to do with arrears of taxes.

[*Vol. 5. May 6, 1909. Cross Examination of A. G. Potter.*]

[By Mr. McClintic]: The next schedule is 7—

The Special Master: Plaintiff's Exhibit G-1.

Q. (Continuing): G-1; No. 7 of the decree. The charge in that schedule, Mr. Potter, $225.279.83 received by West Virginia. What evidence did you have that West Virginia received any such sum?

The Special Master: That is on page one.

Mr. McClintic: Yes.

A .The auditor's report of the house journal 1862-3, dated Wheeling, July 14, 1863.

By Mr. McClintic:

Q. What auditor?

A. I have not the name of the auditor here. I think the report was by Treasurer Hildreth.

Q. Of what state was Mr. Hildreth the treasurer? 384

A. I don't know whether it was the restored state or West Virginia.

The Special Master: What did he say—that he was the treasurer of the Pierpont Government?

Mr. McClintic: I think so.

The Special Master: This schedule does not contain the date. What was that item?

The Witness: On page 2 that is given.

The Special Master: You have your schedules all paged correctly now, have you not?

Mr. McClintic: Yes, sir.

The Special Master: So we can refer now to the new pages?

By Mr. McClintic:

Q. Was not that sum taken by you from a letter written by S. P. Hildreth to Governor F. H. Pierpont, July 14, 1863?

A. Yes, a copy of the letter as the schedule states. In the letter above referred to is the following paragraph, and then it goes on to state the amount of money received and disbursed.

By Mr. Harrison:

Q. Read the paragraph.

A. "In a letter in auditor's report House Journal 1862, line 3, dated Wheeling, July 14, 1863, from S. P. Hildreth, Treasurer, to Governor Pierpont, he reports having made an examination of what we took to be the books of the restored State."

In that letter above referred to is the following paragraph: 385

"In this same journal we find the amount in the Treasury on the 1st of October, 1862, to have been $120,159.01; received to June 19, 1863, $252,529.71; making a total of cash to be accounted for $372,688.72. Out of which there was paid $147,408.89. Leaving a balance in the Treasury June 20, 1863, of $225,279.83."

By Mr. McClintic:

Q. In what part of that letter did you find those words, "Making the total of cash to be accounted for?"

A. I introduced that.

Q. Were you not starting out to read what the letter purported to say?

A. The figures show that there is that charge to be accounted for.

Q. Did you not start out, in answer to a question a moment ago, to read the paragraph?

A. Yes, sir.

Q. And did you not interpolate some language of your own in reading it?

A. Yes, sir; but you had a copy of the report before you.

Q. You were doing that in answer to a question of Mr. Harrison, were you not?

A. Yes, sir, I believe so.

Q. What evidence have you that West Virginia got that $225,279.83?

A. None whatever.

The Special Master: What does this indicate; that it was in the Treasury of the Pierpont Government or in the Treasury of some other government?

The Witness: That the Government of West Virginia took 386
it over from the restored government.

Mr. McClintic: How did it indicate that?

Mr. Anderson: That is rather a matter of argument.

Mr. McClintic: No, it is not; it is a matter of fact.

The Special Master: How would it do to inquire whether there is anything in the letter that is indicative of the place where the money went except the extract he quotes. What is the fact about that? Excuse me for making the suggestion?

The Witness: There is nothing—

By the Special Master:

Q. Have you given all of the letter that tends to indicate where the money was and where the money went?

A. Yes; that was my intention.

Q. And so, wherever it was, it was simply a matter of construction from this?

Mr. Anderson: Will you read your note at the bottom of the page, page 2?

The Witness (apparently reading): Governor Boreman's message of July 23, 1863, says the report of Hildreth shows a balance in the Treasury of June 19, 1863, which is to be transferred to this State under the provisions of an act of the General Assembly, passed February 4, 1863. See page 6, Volume 1; Virginia vs. West Virginia reports.

The Special Master: Of what State was Boreman Governor?

Mr. Harrison: He was the first Governor of West Virginia.

The Special Master: So far as the letter is concerned, the 387
extract shows everything that the letter discloses?

Mr. Harrison: Yes.

The Special Master: And then you supplement it by this extract from the Governor's message?

By Mr. McClintic:

Q. Then you have no other evidence than the message by Boreman and this letter—which message of Boreman says there was so much in the Treasury on the 19th of June, 1863, meaning the Treasury of Virginia, which was to be transferred?

A. That is all.

Q. You have no evidence that it was transferred in any way?

A. None whatever.

Q. In schedule 2, mentioned on page 1, and also page 3, you charge West Virginia with $9,937.86. On what basis do you make that charge?

A. From information read out of the same letter just referred to, in a published report found in Charleston.

Q. Have you any evidence that that money was ever transferred to West Virginia?

A. None whatever.

Q. Have you any evidence that that money was ever in the Treasury at any time?

A. No, sir.

Q. You make a charge on schedule 3 of $1,343.80. The schedule is on page 4. Where did you get that information?

A. The auditor's reports of 1861-70; 1871-76. 388

Q. The auditor's reports of what state?

A. The state of West Virginia.

Q. You do not mean the auditor's report of the State of West Virginia of 1861?

A. Yes; the book was marked "Auditor's report 1861-70" on the back of the book.

Q. You simply mean they were bound together?

A. That is all. The first year was 1862, the year ending 1862, as shown in the schedule, table C, page No. 7.

Q. Why do you charge West Virginia with anything received in 1862?

A. We have not done so under this schedule.

Q. I understand you to say so.

A. I said the first report mentioned in that book was marked 1861-70, the report of September 30, 1862.

Q. Whose report?

A. The Auditor's.

Q. Of what state?

The Special Master: What auditor?

Mr. Anderson: The Pierpont Government, I suppose.

A. I have not that name.

Mr. Carlisle: What state was he auditor of?

The Special Master: Tell us whether he represented Virginia or West Virginia?

The Witness: The restored government. I am not so familiar with the personnel of that Governmental force up there as some of you gentlemen are.

Mr. Harrison: Where did you find the book you referred to? 389

A. In the State Library in Charleston, West Virginia.

By Mr. McClintic:

Q. On the schedule marked page 1, stock in Merchants and Mechanics Bank, Wheeling, $40,000. Please explain what that charge was for.

A. I would like to explain that that item was entered under a misapprehension. I had a memorandum when I came down here at the first hearing to investigaate that, and it was not my understanding that that entire schedule was to be introduced as evidence; but it was introduced, and I overlooked the matter of looking up that particular item. I have since found that those shares were sold by the Sinking Fund in 1857, and we would therefore like to withdraw that item from the schedule.

Q. Did the State pay any money for that stock?

A. I believe it was a stock bonus.

Q. You mean it was given to the State under an act of the legislature?

A. Providing for something in the way of a franchise tax, I presume.

The Special Master: Is it conceded on the part of counsel for the plaintiff that that item shall go out?

Mr. Anderson: Yes, sir; that item goes out.

Mr. Harrison: I understand, Mr. Potter, that this schedule 7 was put in—

The Special Master: Plaintiff's Exhibit G-1—

Mr. Harrison: Was put in before you had fully completed your investigation of the bank stock item referred to?

The Witness: Yes, sir. 390

By Mr. McClintic:

Q. Did you look at the item of the Northwestern bank in reference to the item which you marked "not on annual report?"

A. I have not had time to investigate that?

The Special Master: Do you wish him to investigate that?

Mr. McClintic: Yes; I asked him to do so.

The Special Master: We might suspend, then, with this witness, and go on with some other witness.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: We now offer Defendant's Exhibit G-1. 568

The Special Master: That is offered and received.

(The exhibit referred to is marked Defendant's Exhibit G-1.)

By Mr. McClintic:

Q. Please state if that exhibit was made under your direction and signed by you?

A. That exhibit was made under my direction and is correct, in regard to such items as are included thereunder, as qualified by the caption; and it is signed by me.

Q. On page 2, the first item, total turnpikes, roads, etc., $700,-103.49. Please explain what you mean by that?

A. Those were the total amounts in regard to that particular item which the State had invested in the stock of turnpikes and roads lying wholly in the territory now constituting the State of West Virginia. It was the original and full amount of the investment of the State.

Q. That is the purchase of stock in various companies by the State of Virginia?

A. Yes; incorporated companies.

By the Special Master:

Q. When you say total cost, do you mean that is the total capital of the stock?

A. No, sir; not exactly.

Q. You mean that is the aggregate expenditure of the State in the stock of that company?

A. Yes, sir. 569

Mr. McClintic: That class of company, there were a hundred or more of them.

The Special Master: Oh, yes.

The Witness: The State subscription was first two-fifths and then

three-fifths. That was the usual subscription to the capital stock of these various companies.

By Mr. McClintic:

Q. Take the next item, navigation companies, $210,500. Please explain that.

A. The same applies to that. That was the amount that the State paid. I may say that there were sometimes differences between the amount paid and the amount subscribed. This is the amount actually paid in by the State for the capital stock which it purchased, in these incorporated navigation companies, the navigation companies being devoted to the improvement of rivers.

The Special Master: Do you say that as a rule the investment of the State was two-fifths?

The Witness. Yes, sir. In the early part of the period in some instances it was one-fifth, usually two-fifths and later three-fifths.

By Mr. McClintic:

Q. On Plaintiff's Exhibit C-1 there is charged an item, *Monongalia*, $8,180.

Mr. Anderson: What page is that?

Mr. McClintic: Page 11. Please state if you admitted to your account an item, 1822, $5,520.

The Special Master: That is prior to the beginning of his 570
account, is it not?

Mr. McClintic: Yes.

By the Special Master:

Q. Then I may assume that every item that appears on the schedules presented by the plaintiff that antedates March 19, 1823, is not included in the statements made by Mr. Dixey?

A. Yes, sir.

Q. That statement covers the whole series of exhibits and schedules?

A. Yes, sir.

By Mr. McClintic:

Q. Look on page 2 of Defendant's Exhibit G-1 and explain the item Bridge Companies, $78,412.50.

A. On page 2?

Q. Yes.

A. Those were incorporated bridge companies, and that amount is the amount that the State paid for its stock purchased by it in those incorporated bridge companies.

Mr. Spooner: When you say purchased, do you mean subscribed for?

The Witness: Paid; that is, the actual payment by the State. It does not agree in all cases with the subscription.

By the Special Master:

Q. Does the amount paid in any instance exceed the subscription?

A. I recall no such instance.

Q. But in some cases the amount subscribed exceeded the amount paid in?

A. Yes, sir. The payments were made proportionately. 571
When the public paid in so much, the State paid in so much; and sometimes the whole amount was not paid in.

Q. The inference is that when the State did not pay the full amount of the subscription, the public did not pay the full amount?

A. That is the inference.

Q. That is, it was a pro rata payment all around?

A. Usually, yes.

By Mr. McClintic:

Q. The next item is in regard to interstate roads between and in the the territory now constituting the Commonwealth of Virginia and the State of West Virginia; $114,652.84. Please explain that?

A. That amount is the amount paid by the State for its subscription to the capital stock of the Interstate turnpike and roads.

By the Special Master:

Q. That is, the turnpikes leading from one state to another?

A. Yes, built by an incorporated company.

Q. Have you any computation that would apportion that payment to the respective distances that the roads would extend in either State?

A. We have the mileage in the two states figured out in every case. That would not always be necessarily a fair method of apportionment, however. Portions of the road might be more difficult to build than other portions.

Q. That, of course, would be arbitrary.

A. I may say, sir, that those mileages are shown on the details of this exhibit in this report.

Q. Are those facts worked out? 572

A. They have not been applied to the amount spent.

Mr. McClintic: We expect to prove that fact later. The next is $25,000—

The Special Master: I was going to say that all these facts would be admissible. I cannot tell in advance what theory I am going to

adopt. I have to have all the facts before me and then reach a conclusion.

By Mr. McClintic:

Q. That item on page 2; please state, if you know, the facts in relation to that.

A. That is an amount paid to the town of Bath.

The Special Master: Do you understand that it represents an indebtedness to the town of Bath by the State?

The Witness: The inception was it was a loan to the town of Bath.

The Special Master: And so far as you have discovered, it indicates the indebtedness of the town of Bath to the Commonwealth?

The Witness: Yes, sir.

The Special Master: And what has been done with it the books do not disclose.

The Witness: They do not, no, sir.

By Mr. McClintic:

Q. The next item, Northwestern Bank of Virginia, at Wheeling, $341,800. Please turn to that exhibit. Page 9, on the same exhibit; explain that amount and what you mean by that amount, $341,800.

A. The amount is the par value of the stock held by the Commonwealth and Literary Fund of the State of Virginia in 573
the Northwestern Bank of Virginia, which was located at Wheeling. The Commonwealth Fund originally held 4,000 shares, on which they paid $375,091.33 in cash, and the balance of $400,000, amounting to $24,908.67 in dividends and interest accumulated. The amount held by the Literary Fund, 500 shares, was purchased in 1832, so that the total amount was Northwestern Bank stock held January 1st, 1861, was 34,018 shares, with a par value of $341,800, excluding 326 shares held by the Board of Public Works, and which were received as bonus stock without cost to the State.

Q. That bonus stock, you mean, is in the nature of a franchise tax?

A. Yes.

Q. And those 326 shares were based on that?

A. Yes.

Q. I notice you say that in 1857 the Commonwealth sold 1082 shares. That is shown by the books of Virginia?

A. Yes, sir.

Q. So it was shown by the books that the number of shares held by the State of Virginia in the Northwestern Bank was 3418, as of January 1st, 1861, I believe?

A. Held by the Commonwealth and Literary Fund, yes, sir.

Q. Well, that is the same as the state.

A. Yes, sir.

Q. How many branches, if you know, from the Acts, did the Northwestern bank have, and where were they situated?

A. I prefer not to testify on that from memory. The record 574
shows.

Q. Please explain the item Fairmont Bank, Marion County, $50,000, which is also on page 9 of the exhibit?

A. That was the amount of subscription of the State for 1,000 shares purchased in 1860; 1,000 shares of the capital stock of the Fairmont bank in Marion County.

Q. And the par value of those shares was $50?

A. Yes, sir.

Q. And the par value of the shares of the Northwestern Bank was $100, was it?

A. Yes; $100.

Q. On page 2 we find James River and Kanawha Company, $9,542,004.30. Please explain why that was included in that form and what it is.

A. That is shown in detail on pages 10 and 11 of the Exhibit.

Q. On pages 10 and 11 of the complete details?

A. Yes. Do you wish me to go over it in full?

Q. No, unless somebody else wants it; I don't care for it. That sum, $9,542,004.30, represents what?

A. That sum represents the total cash outlay for the Commonwealth of the stock of the James River and Kanawha Company, which it owned.

Q. On the 1st day of January, 1861, what was the relation of the State of Virginia to this company, as to the amount of stock held?

A. It held 104,000 shares, of the par value of $10,400,000.

The Special Master: You get that from the aggregate of 575
72,000 and 32,000 on page 11?

The Witness: Yes, sir; shown in the recapitulation on page 11.

By Mr. McClintic:

Q. Was the James River and Kanawha Company indebted to the State of Virginia the 1st of January, 1861, in any sum that you remember or did you examine into the details of that?

A. I don't remember that sufficiently to testify from memory. I may ask you whether you mean in addition to the amount represented by capital stock?

Q. Yes.

A. I don't remember the amount sufficiently to tell that.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy.*]

Q. Now, dealing with your Exhibit G-1, which is responsive to paragraph 7 of the decree, will you please look at that for a moment, Mr. Dixey? 661

A. Yes, sir.

Q. On page 1 of that exhibit you say "Appended hereto is a statement of such property as was received by West Virginia and which has not been included in any schedule heretofore prepared and rendered." Now, turning to the next page we find an itemized list of property, footing up $11,079,973.19. Is that the list referred to in the certificate on page 1? 662

A. That is not the list. That is the property. The footings are not referred to on page 1. It simply refers to the property received. That is the total cost, the money expended for those. Those are still to be valued.

By the Special Master:

Q. That is the summary of the cost of the property, is it?

A. Yes, sir; I have not assumed to put any value on those.

Q. That is, what you have on page 2 is a summary of the cost of the property referred to in the certificate on page 1. Is that right?

A. Yes, sir.

By Mr. Harrison:

Q. My question is, do you state that the property listed there was received by West Virginia?

A. I understand that it was constructively received; yes, sir. These are practically all stocks. Now, I don't understand that the stock certificates were delivered to West Virginia.

Q. Where did you get your understanding from?

A. From that section of the decree. 663

Q. I do not see how you could get it from that.

A. If you will make your meaning a little plainer—

The Special Master: The understanding he is asking you for, as I understand it, is where you get your understanding that all the stock was not delivered to West Virginia. He wants to know where you got that information.

By Mr. Harrison:

Q. Where did you get your understanding that that was constructively held by West Virginia?

A. Well, I have been so advised.

Q. By whom?

A. I know that an amount of the stock of these old Companies was never actually delivered to West Virginia.

Q. Did you get your information from the public records of Virginia?

A. The stock is in the Treasurer's office at this minute of a great many of these companies.

Q. That is not an answer to my question. You have said just now that you had an understanding that this list of stock was constructively delivered to West Virginia?

A. Yes, sir.

Q. I ask you where you got that understanding. If you will answer the question, I will be obliged to you?

A. I think I cannot say I have been actually so instructed by counsel, but I have received that impression from counsel in conversation, in talking this matter over. I certainly did not evolve it myself.

Q. Then when you speak of your understanding on that subject, you refer to the impressions you have received from 664
counsel?

A. I think from counsel; yes, sir. It is a very definite impression on my mind. I cannot locate it absolutely.

By the Special Master:

Q. To what extent did you find the original stock on file?

A. I have not made any attempt to go through it. There were hundreds and hundreds of certificates down there, and they don't know what they have got themselves.

Q. In whose name?

A. I don't even know that. I have only seen a very few certificates.

By Mr. Harrison:

Q. It is impossible for you to tell whether it is West Virginia's stock or Virginia's stock or any other stock?

A. Well, this list, of course, was prepared under instruction of counsel.

Q. The thing I was inquiring about now was the particular matter the stock certificates.

A. I don't actually know. No actual investigation has been made to see just what stock certificates are down there.

Q. You say investigation has been made?

A. Has not been made, on our part.

Q. You have an item of $9,542,004.30 of stocks of the James River and Kanawha Company?

A. Yes, sir.

Q. Which, according to your statement, is constructively held by West Virginia? 365

Mr. McClintic: No, sir; he never made any such statement.

A. No, sir.

Mr. Harrison: That is the explanation he had given?

A. It does not say so. There is the schedule.

By Mr. Harrison:

Q. Just wait one moment. Let us see what it says. You have just stated that was a list of property certified as having been received by West Virginia, and when I asked you how you knew it was received by West Virginia you said your understanding was it had been constructively received by her, and then what you meant by that was that you had derived that impression from counsel. Now, I ask you if I am to understand that that $9,000,000 of stock of the James River and Kanawha Company was constructively received?

A. I think I can make a more definite answer than I have made.

Q. Just answer my question. Then you can make just as definite a one as you choose. I say does that mean, according to your testimony, that $9,000,000 of the stock of the James River and Kanawha Company was constructively received by West Virginia?

A. Certainly not.

Q. Now, what do you mean by your caption. Let me read your caption to you and then you may answer my question. What do you mean by this caption: "Summary of the property received by the State of West Virginia; not embraced in any preceding schedule?" What do you mean by that. Is that true, or does it mean something else than it states?

A. No; that is copied from paragraph 7 of the decree.

By the Special Master:

Q. How did you come to include these items under that heading?

A. May I explain?

Q. Yes, certainly.

A. I understood paragraph 7, and I have been so advised, to cover the property that passed under the act of February 3, 1863, and I have understood that all the stock of the companies incorporated in this State, in which West Virginia had any interest, passed under that act; and this schedule is supposed to represent the property that was passed.

Q. Were you not instructed by counsel to include these items under that heading?

A. That is true.

Q. You were instructed by your counsel to include the items under that heading?

A. To include the items under this heading; yes, sir, but that is not the question Mr. Harrison asked. That is included.

The Special Master: Is there any question raised about that, about the accuracy of the statement?

Mr. McClintic: The heading is a trifle misleading, as it was put there, your Honor. I never paid any attention to it whatever. The instructions of counsel were that all items of stocks should go under what we call G-1, clause 7, and in the reference to the 667
James River and Kanawha Company, Mr. Dixey, instead of making a division, simply put the whole stock down here and put the facts down and left it to us to decide the question. We did not see this exhibit until last Monday, and we did not think it worth while to change it afterwards, as it was susceptible of explanation.

The Special Master: As it stands, it is obvious what inference might be drawn from it.

Mr. McClintic: West Virginia, of course, never received that stock of the James River and Kanawha Company, because there is only a small item of that in West Virginia. The balance is in Virginia, and that is misleading. As to the turnpikes and roads that extended across the line, West Virginia received stock for such portions of the roads as were in West Virginia, and did not receive stock for such portions as were in Virginia.

The Special Master: Both parties must appreciate that these schedules are here before me, and I am quite likely to take them for what they state. They must take such action in relation to the schedules, so far as they do not state what they appear to state, as they are advised the rights and interests of their respective clients require. Do I make myself clear about that?

Mr. Spooner: I did not hear your honor.

The Special Master: These schedules all come here before me, and I take the statements that appear on them as true. If the statements are not in accordance with the ideas of counsel in relation to them, they must take such action in relation to the schedules 668
on either side as they are advised the interests of their clients require.

Mr. Spooner: That shall be done, but the subject had not been brought to my attention.

The Special Master: You appreciate their significance, so far as I am concerned. I take these statements as made by the accountants on either side as practically the admissions and declarations of the parties. If they do not accurately state the ideas of the parties, of course the counsel on either side must be careful to see that they must protect the rights of their clients in connection with the statements with which they do not agree, as they may be advised the interests of their clients require.

Mr. Spooner: It is a question as to the construction of the receipt. That is a question of law. I supposed this was an exhibit containing a list of the stocks.

The Special Master: All you are doing at present is to get the facts presented before me, and as the facts appear, of course you predicate your legal propositions thereon; but a clean statement of what the thing is, unless it is explained in some way, of course will go with me. I cannot take any other course in relation to it.

Mr. Spooner: I suppose the real facts are the important thing, and not a mere headline.

The Special Master: Certainly; but in the absence of a fact that counter indicates a headline, the headline goes with me.

Mr. Spooner: Certainly. 669

The Special Master: I shall not take this and go digging. down to evade headlines. If the attorneys have something that counter indicates a headline, I will read it.

Mr. Spooner: We will try and relieve you of any such labor.

The Special Master: In the absence of explanation or suggestion, the headline will stand.

By Mr. Harrison:

Q. Did you visit West Virginia in the progress of this investigation?

A. I have been to West Virginia; yes, sir.

Q. I did not ask you whether you have been to West Virginia.

A. I have been to West Virginia in the progress of this investigation; yes, sir.

Q. Did you go there for the purpose of conducting an examination of her records?

A. I did not myself go there for that purpose. I sent two representatives over there to make the investigation.

Q. Who were they?

A. Do you want the names?

Q. Yes.

A. Mr. D. E. Balsley and Mr. L. A. Petty.

Q. Then you, yourself, took no part in the investigation of the records in West Virginia?

A. Not of the investigation of the records in West Virginia; no, sir.

Q. Were the two gentlemen you have mentioned just now as having investigated your employes?

A. Yes, sir; Mr. Balsley is my employee. 670

Q. How about the other man?

A. Mr. Petty is employed by the State of West Virginia, under my direction.

By the Special Master:

Q. They are all employed in the common work, I suppose?

A. Yes, sir; he went to assist Mr. Balsley, and do whatever Mr. Balsley told him to do.

Q. He simply was not part of your force?

A. He was not, so far as my pay roll goes.

Q. But he was co-operating with your people?

A. Yes, sir.

By Mr. Harrison:

Q. Do you know what records they examined?

A. Do I know what records they examined?

Q. Yes.

A. Yes, sir; they examined those records that were examined by the representatives of Virginia.

Q. Did they examine the journals sheriff's accounts, license books, and the books of the railroad, banks and express and insurance companies of the restored State of Virginia which are referred to in the letter of treasurer Hildreth, of July 14, 1863?

A. They examined the document in which that letter is.

Q. Now I ask you if they examined the documents referred to in that letter?

A. Will you kindly read the letter. 671

The Special Master: Call attention to the documents.

Mr. Harrison: I do not want to read the whole letter. The letter refers to the documents I have mentioned. It refers to the following books: The Journal, Sheriff's accounts, license books, and the books of the railroads, banks, express and insurance companies.

A. The books of the railroads?

Q. Yes.

A. Certainly no such investigation was made.

Q. Or the registry, I believe it was, of banks and insurance companies?

A. No, sir.

Q. Did they examine any of those documents or books referred to in that letter?

A. No, sir.

Q. How do you know?

A. I know because I know what they examined.

Q. Were you there when they examined?

A. No, sir.

Q. You did not see them examined?

A. No, sir.

Q. How do you know what they examined?

A. Because they examined and made a report and brought it

back with them. The book that contains the report that is quoted from in Virginia's Exhibit—they examined that book and brought it back here to Virginia with them, and copies were made of that and we have them in our papers here.

Q. Is that your only reason for saying that you know they 672
did not examine the documents referred to in that book?

A. It was not reported to me that they did, and if they had it would have been so reported; and for the further reason that they do not exist.

Q. How do you know they do not exist?

A. I think Virginia has so stated.

Q. Is that your only reason for saying so?

A. I accepted that statement.

The Special Master: Who said so?

Mr. Harrison: Virginia, he says.

By Mr. Harrison:

Q. You do not know, then?

A. Not of my own knowledge, no, sir; not by any search I have made, I don't know.

The Special Master: You say Virginia so stated. Who do you mean?

A. I say that is my impression.

Mr. McClintic: If the Court please, I forgot to call the attention of these gentlemen to the fact that some time in the month of April I did find in the vault of the Treasury of West Virginia a book which had in it certain memoranda of the restored government, and you might term it, I presume, accounts. I do not know whether to call it a journal or what. I also found another book which contained other memoranda, both of which are here, and both of which we are ready to give to them any time they want them. I had forgotten it up to this time.

Mr. Harrison: We would like to have them.

The Special Master: Do those books contain anything 673
material?

Mr. McClintic: They contain certain receipts and disbursements of the restored Government of Virginia, beginning, I think, sometime in 1861 or 1862. I don't remember the exact date. I brought them over here a short time ago.

Mr. Conrad: There are three books referred to in several of the State papers connected with that Government, and the Statement is made in one those papers that one of the books will be deposited here in the archives of this State. We have made search for nearly two years for those three books.

Mr. McClintic: I will state further that when General Anderson

and Mr. Potter and others were there last October I had never seen or heard of those books. I went with them to the State officers and also with Mr. Lewis, who had been there longer than any of the others, and they said there were no such books. About three weeks ago—I do not remember just when, sometime in the month of April—I was in the Treasurer's office one day, and I saw an old clerk of the treasurer's office in there. I said, "Did you ever find any books, so and so?" He made a search in the vault and said, "Here are a couple of old books, which you might be looking for." At that time I did not look at them, but a few days afterwards I did go back and look at those books, when I got time to do so, and I brought them over here. The gentlemen can have them any time they went them.

Mr. Harrison: Mr. McClintic, when did you say you dis- 674
covered those books?

Mr. McClintic: Sometime in the month of April.

Mr. Harrison: Of this year?

Mr. McClintic: Yes, sir.

Mr. Harrison: And they are here, and we can have access to them?

Mr. McClintic: Yes; you can have them at any time you want them.

The Witness: Mr. McClintic, may I interrupt you a moment. In thinking this matter over at this minute, I think Mr. Balsley was not the man who made the examination. I think it was Mr. J. C. Pybas. Mr. Balsley was engaged on some other examinations, I think. I was confused.

Q. Did you learn anything in the course of your examination and investigation into this matter of an item appearing in statement F, filed with the report of Jackson, Bennett and Campbell, and exhibited by counsel for West Virginia in this record, showing $539,000 of stock of Virginia in West Virginia banks, received by West Virginia?

A. It is in your Exhibit F?

Q. No; I say filed by counsel for West Virginia.

Mr. McClintic: You mean the Bennett report?

Mr. Harrison: Yes, the Bennett, Jackson and Campbell report.

Mr. McClintic: I do not think Mr. Dixey has ever investigated the Bennett report.

Mr. Harrison: Let him answer the question.

A. I am not entirely sure what you are talking about. 675

Mr. Conrad: Let him see that report. Here is a report filed by the counsel for West Virginia.

Mr. McClintic: No; it is not filed anywhere.

A. I know nothing of that. I have seen that book. I have that book.

The Special Master: You mean filed here before me?

Mr. Harrison: No; it is filed in the case.

Mr. McClintic: No, sir; it is not filed in the case anywhere. When we printed that book, we printed it for the information of people in West Virginia, not for anybody in this case or outside of it. In 1871, under a resolution passed by the legislature, three gentlemen, Mr. Bennett, Mr. Jackson and Mr. Campbell made what they called a report, which report was made to the Governor of West Virginia. It never received any attention, you might say, in West Virginia in any way, shape or form. It was for the benefit and information of the people of West Virginia, and when we printed these books, we printed that with it, because that was a document which we wanted people to see, along with the other documents. It is not filed here, in the Supreme Court, or anywhere else.

The Special Master: This is simply cross examination, and cross examination in relation to it does not make it evidence. I was simply inquiring, because I did not know, whether it was something that had been filed before me. Of course I know nothing personally about the Bennett report. I suppose it is competent for them to cross examine in relation to that as well as any other document.

Mr. Harrison: The question is entirely germane to our 676 investigation.

The Special Master: I say he may answer.

A. I have seen this book, Mr. Harrison, and I have run through all the tables there. I have never given any of them very much attention.

By Mr. Conrad:

Q. In the course of your investigations, either direct or through agents in West Virginia, did you learn anything of a sum of between $500,000 and $600,000 in amount which had been derived by the State of West Virginia from the sale of bank stocks, and which appears or did appear a few years ago in their school fund, invested there by the State of West Virginia?

A. At what time?

Q. It was received at the time the bank stocks were sold by the State of West Virginia, whenever that was.

The Special Master: The question is whether you learned in your investigation anything about that item.

By Mr. Conrad:

Q. Did you ever hear of it at all?

A. I would want time to consult our papers on that before I answer it.

Q. Have you any memory about it?

A. What I mean is this paper that is now being printed and which we introduced in carbon form this morning.

By Mr. Harrison:

Q. You mean you have no independent recollection?

A. I have no independent recollection. 677

By Mr. Conrad:

Q. You have no impression on your mind?

A. No, sir; not as to that. I cannot identify it.

Q. You never heard that they had actual sequestered, segregated, a sum approaching $600,000 many years ago, the proceeds of the sale of bank stock, and put it in their school fund for the purpose of preserving it?

A. No, sir; I can say absolutely that I never heard that.

Q. Nor anything like it?

A. No, sir; nothing that made any such impression on me.

[*Vol. 6. May 7, 1909. List of Acts and deeds by Mr. McClintic. Affidavit of J. S. Darst.*]

Mr. McClintic: Just for the convenience of counsel, if they want to look at these acts in the meantime, I want to give the title of a few acts we expect to rely on: 729

Acts of Virginia, restored government, 1861-2, chapter 35, page 20.

Mr. Harrison: Please state as you go along, if it will not inconvenience you, the subject to which the act relates.

Mr. McClintic: That one, as I recollect, gives all the stock of a certain Turnpike Company to the counties through which it passed, called the Marshall & Ohio road.

Acts of Virginia, restored government, 1861-2, chapter 62, page 37. That is in reference to the Kanawha Board.

Mr. Harrison: These are the acts of the restored government?

Mr. McClintic: The acts of Virginia, the so-called restored government.

Acts, 1862, page 13, chapter 15, that is an additional Kanawha Board.

Acts 1862, chapter 18.

Mr. Anderson: We have that volume. That is the compilation made after the war by the West Virginia government—the acts and constitution of Virginia and West Virginia.

Mr. McClintic: Then acts 1862-3, chapter 68, page 58.

The same acts, chapter 72, page 62.
Acts of West Virginia, 1863, chapter 30, page 31.
Also chapter 120, page 178.
Acts 1865, chapter 71, page 61.
Acts 1866, chapter 117, age 115.
Acts 1866, joint resolution No. 8, page 133.

I also want to tender a deed of trust, dated July 30, 1858, between the Coal River Navigation Company of Virginia and James L. Carr and others, trustees.

The Special Master: What is the date of it? 730

Mr. McClintic: July 30, 1858. It grants all the properties and assets of the Coal River Navigation Company to these trustees to secure certain debts therein set out.

(The paper referred to is filed herewith, marked "Plaintiff's General Exhibit No. 2.")

Mr. McClintic: We also tender a deed dated October 25, 1865, between said trustees and certain other parties, purchasers at the trustees sale of said property.

(The paper referred to is filed herewith, marked "Plaintiff's General Exhibit No. 3").

Mr. McClintic: Also a report made by the trustees, recorded July 30, 1867, explaining the persons to whom the money went that arose from the trust sale.

The Special Master: What is that; a report to the court or a report to the corporation?

Mr. McClintic: It is the report to the court, or to the clerk, under the laws of West Virginia, which required a report by trustees.

The Special Master: Simply making it a matter of public record under the statute?

Mr. McClintic: Yes, sir.

I also desire to offer in evidence a certificate of J. S. Darst, present Auditor of the State of West Virginia, which is short, and I will read it:

STATE OF WEST VIRGINIA,
AUDITOR'S OFFICE,
CITY OF CHARLESTON, TO-WIT:

I, J. S. Darst, Auditor of the State of West Virginia, do hereby certify that I have carefully examined the records of the Board of the School Fund of West Virginia, and that the 731 State received for the benefit of its School Fund in the Na-

tional Bank of West Virginia in the City of Wheeling three hundred (300) shares of stock, in the Parkersburg National Bank of Parkersburg, West Virginia four hundred (400) shares of stock, and in the First National Bank of Wellsburg, at Wellsburg, West Virginia, three hundred and fifty-one (351) shares of stock. That the records of West Virginia show that these three Banks were the successors of the Northwestern Bank of Virginia at Wheeling known as the parent bank and of its branches at Wellsburg and Parkersburg, respectively. That each of these shares of stock was of the par value of One Hundred ($100.00) Dollars each,

And I do further certify that the State of West Virginia received from the First National Bank of Fairmont five hundred shares (500) of the par value of One Hundred ($100.00) Dollars each of stock in said last named Bank, which was the successor of the Bank of Fairmont, and that such stocks were received by said State for the benefit of her School Fund in exchange of stock formerly held by the State of Virginia in said Banks, which stocks were taken over by the State of West Virginia by virtue of the Act of the Legislature of Virginia, passed on the 3rd day of February 1863.

And I do further certify that out of the remaining assets of the said Northwestern Bank of Virginia as a dividend on the stock so held by said State of West Virginia therein, there was paid to the said State on the 9th day of July, 1867, $10,510.00, and 732 on the 12th day of August, 1868, by G. Lamb for and on behalf of the Commissioners of said Bank the sum of $10,510.00, and that I do not find that any other or further sum was ever paid to said State of West Virginia by the Commissioners of said Bank out of the assets remaining after the three said National Banks had been formed out of the same.

Given under my hand and official seal this 27th day of April, 1909.

J. S. DARST,
Auditor.

(Seal)

The Special Master: With reference to the three exhibits introduced, I suppose they are introduced for the purpose of showing some specific fact?

Mr. McClintic: Yes, sir.

The Special Master: I do not suppose there is any contingency by virtue of which this record need be encumbered with the documents *in extenso*. As to documents of that character, I would like counsel for West Virginia to prepare as succinct and concise an abstract as they can of the document, which will go into the record in the place of the document, and if Virginia puts in documents of a similar character, I would like to have them do the same thing. There is

no sense in cumbering the record with a great long deed that is only for the purpose of showing one fact. Of course the admitting of the abstract or the admitting of the deed does 733
not foreclose any proposition involved in the case.

Mr. McClintic: The deeds are introduced for just one purpose.

The Special Master: I prefer in cases like that to have counsel themselves make their own abstract rather than undertake to make it myself. I will not cumber this record with a lot of material of that kind. So that counsel on either side can do that and have it assented to by counsel on the other side as a proper abstract.

Mr. McClintic: Those three deeds were with reference to one navigation company, to show that prior to the 1st of January, 1861, the company in which the State of Virginia held stock, of the par value of $96,000, conveyed all its assets to trustees.

The Special Master: You can make a very short abstract to show all that.

Mr. McClintic: Yes, sir.

Mr. Anderson: It became insolvent and lost all its property. That is what you wish to prove?

Mr. McClintic: Yes, sir.

Mr. Harrison: That is a fact established by the deeds, is it not, that the company became insolvent?

Mr. McClintic: Yes.

The Special Master: That can be shown, you see, by a very concise abstract.

Mr. Spooner: They could not foreclose without a mort- 734
gage.

Mr. Anderson: I say a mortgage which was foreclosed and did not satisfy the obligations of the company secured by it.

[*Vol. 6. May 7, 1909, Direct Examination of C. E. Scoville.*]

By Mr. McClintic:

Q. Before I forget it, Mr. Scoville, have you examined the books called the journal and ledger, I presume, of the restored government, which I brought here a few days ago?

A. Yes, sir.

Q. Will you state to the court what amount of money those 744
books show were paid to the treasurer of West Virginia on the 20th of June, 1863, or thereabouts, by the restored State?

A. The books of the restored State to which you refer show that $150,000 was turned over to the new State of West Virginia, in three amounts.

The Special Master: On what date?

A. On July 2, 1863, $92,866.17; on the same date an amount of $47,734.03; on July 9, 1863, $9,399.80; total $150,000.

By Mr. McClintic:

Q. What other moneys if any were turned over to the new State by the restored State of Virginia?

A. The ledger of the new State of West Virginia, which we have here, shows that on February 1, 1864, there was deposited in the Northwestern Bank at Wheeling $20,771.46, as received, according to the entry in that ledger referred to, from the Treasurer of the Commonwealth of Virginia. That last amount, $20,771.46, is not shown as a disbursement in the books of the restored State.

Q. Do the books show for what purpose that sum of twenty thousand and odd dollars was paid?

A. It is not shown on the books of the restored State. It is shown only on the ledger of the new State of West Virginia as a receipt.

Q. The Act of February 4, 1863, of Virginia, made an appropriation to West Virginia of $150,000 in the first section, 745 and in the second provided "that there shall be and hereby is appropriated * * * all balances not otherwise appropriated that may remain in the treasury." Did you examine the books to see if there were any balances of moneys appropriated and not expended on the 20th of June, 1863?

A. Yes, sir.

The Special Master: In the State of Virginia?

Mr. McClintic: In the State of Virginia.

By Mr. McClintic:

Q. What balances if any were shown?

A. The balance shown on June 19, 1863, as being on hand in the restored State was $225,280.07.

Q. I mean the balances of appropriations made for specific purposes and not yet expended. That is what this act says.

A. I have no information as to that.

Mr. Spooner: That is ascertainable, is it not?

The Witness: I don't think so, from the books.

Mr. Harrison: What was the amount you stated just now?

The Witness: $225,280.07.

The Special Master: That is the balance on hand according to the books. That has no relation to these appropriations inquired of. The inquiry was what balances of appropriations that had been made there were on hand and unexpended, upon which this act of the legislature might be predicated. He says he does not know, and I think he said he thought it would be difficult to ascertain.

Mr. McClintic: The letter from S. P. Hildreth to F. H. 746
Pierpont—

Mr. Anderson: What are you reading from?

Mr. McClintic: From the journal of the Senate of West Virginia, 1862.

The Special Master: That is the letter that has already appeared in the case?

Mr. McClintic: Yes, sir. It shows a number of balances. They are not added up, and there is a whole lot of accounts. I will ask Mr. Dixey to add them up. I will call the matter up again when I get that added up. While we are on that point, your Honor, I want to put in evidence or in the case all of page 24 of the journal of the House of Delegates of the Commonwealth of Virginia, extra session, which met on the 4th day of December, 1862, being a part of the report of Samuel Crane, Auditor of Public Accounts. I will see that it is typewritten in some form, to put into the report, so it applies to the question of argument which we will come to later, whether this $150,000 should be in any way charged to us.

Mr. Hogg: It is spoken of in the Act of February 4, 1863.

Mr. McClintic: The report is not spoken of, but it is applicable to that matter on the question of that charge. I suppose, your Honor, in every case where we want to refer to a journal, that will have to be put specially in evidence—the public journal of the legislature. Is that in the same position as a public act?

The Special Master: I think you had better put into the 747
record somewhere the extracts on which you rely.

Mr. McClintic: Yes; I suppose it might be well to do that.

The Special Master: I have not examined to see whether they would be taken judicial notice of.

Mr. Spooner: I do not think they would.

Mr. Hogg: They have to be proved.

Mr. Anderson: What is the date of the journal?

Mr. McClintic: It is the journal of the special session in 1862. This report is dated Wheeling, November 25, 1862.

Mr. Anderson: The decree makes the public acts and records of the two States since the admission of West Virginia evidence, if pertinent and duly authenticated.

Mr. Spooner: It makes them competent, but they have to be introduced and put into the record. The court does not take judicial notice of them.

By Mr. McClintic:

Q. I find, Mr. Scoville, by an addition of the balances as reported in this letter of Mr. Hildreth, the Treasurer of Virginia, that the amount of these balances, added up, is $19,570.71. How much does

that differ from the amount you found was paid to West Virginia by Virginia?

A. Will you give me that again, please?

Q. $19,570.71?

A. As I understand the question, you want to know the difference between that amd that last amount of $20,000?

Q. Yes; whatever it was. I do not remember the amount.

A. The amount was $20,771.46. The difference is $1,200.75.

The Special Master: In which exhibit do they charge you 748 with $150.000?

Mr. McClintic: They charge us in their exhibit G-1, under the 7th paragraph of the decree, with $225,000, and also some other sum.

The Special Master: On what page do you find that?

Mr. Anderson: It is on the first page of exhibit G-1.

[*Vol. 6. May 7, 1909. Amendment to heading on Defendant's Exhibit G-1.*]

The Special Master: Have the defendants anything further 789 to submit?

Mr. McClintic: We think not; we have no other witnesses at present; but if your Honor please, we want to correct that heading on Exhibit No. 7, which seems to be a trifle misleading. I will have to admit that as one of the counsel I submitted it without reading the heading.

The Special Master: Leave is granted to amend that. Of course, as far as that is concerned, there is no statement made by counsel on either side that they will be estopped by, and if inadvertently any statement has been made which ought to be qualified or changed, it is quite open for counsel to make such change and amendment as they desire.

[*Vol. 7. July 1, 1909. Amounts agreed to.*]

The Special Master: Have you Plaintiff's Substitute G-1? 866

Now, am I to understand that as to the amounts you agree, but not as to classification?

Mr. McClintic: In G-1? 867

The Special Master: Substitute G-1, yes.

Mr. McClintic: The Plaintiff's Exhibit G-1 and the defendant's G-1 are two very different papers.

The Special Master: I understand there is a profound difference—

Mr. McClintic: We agree with the amount of the plaintiff's G-1, as I understand it, but deny that we owe it; and I don't know whether they agree as to the amount of our G-1 or not. What is that, Mr. Potter?

Mr. Anderson: We don't understand your G-1.

Mr. Harrison: The amounts may be correct.

Mr. Anderson: The amounts are probably correct, but we do not understand what relation they have.

The Special Master: Well, before we start on theirs let me get this settled, if we can settle it. Do the defendants agree that the amounts stated in the Plaintiff's Substitute Exhibit G-1 are accurately stated?

Mr. McClintic: Yes sir.

The Special Master: Then, put it in the record that both parties agree that the amounts stated in Plaintiff's Substitute Exhibit G-1 are accurately stated. They do not agree as to the question as to whether they are chargeable to West Virginia.

Mr. Conley: We deny that they are properly chargeable to West Virginia.

The Special Master: I understand that. West Virginia denies that they are so chargeable.

Mr. McClintic: Then I understand that they agree the amount states in our Exhibit G-1 are also accurately stated?

The Special Master: Let me have that and I will get that into the record. Now, this involves agreement on quite a 868
variety of items, on which there was disagreement before; but the items, I understand are now agreed upon, that is the amounts are agreed upon?

Mr. Anderson: Yes, we should say the amounts.

The Special Master: In defendant's Exhibit G-1, do I understand that the complainants agree that the amounts stated in G-1—

Mr. Anderson: It has not been revised or changed?

Mr. McClintic: No, sir.

The Special Master (Continuing) Are accurately stated as to amount?

Mr. Anderson: That is true.

The Special Master: So that the record may show that as to the amounts stated in Defendant's Exhibit G-1 the parties agree as to the amounts. Virginia does not agree as to the classification?

Mr. Anderson: No, sir; she does not.

Mr. Harrison: No; nor as to the pertinency or relevancy of the statement.

The Special Master. No. Of course that eliminates the amounts from controversy.

That covers every paragraph in the decree.

[*Vol. 7. July 1, 1909. Revised heading for Defendant's Exhibit G-1.*]

Mr. McClintic: If your Honor please, before I overlook it, permission was given for us to change the heading of our Exhibit
G-1, and Mr. Dixcy has not written on the heading as we pro- 869
posed to change it yet, but he will do so.

The Special Master: I understand that.

Mr. Dixcy: Shall I read the revised heading now?

The Special Master: If you please.

Mr. Harrison: You are changing the certificate now. He has certified to certain facts before. Now do you want him to certify to a different set of facts?

Mr. McClintic: Facts are facts. The heading was the only thing that was wrong. The facts speak for themselves. Everybody knew that the James River and Kanawha Company was not wholly in West Virginia—

The Special Master: I will fix this in just a minute. Let me have the schedule so that I can follow it.

Mr. Dixcy: The heading of the schedule— 870

The Special Master: Now, counsel for West Virginia desire to have Mr. Dixcy, their accountant, change the heading of Defendant's Exhibit G-1. They wish to strike out the heading that now appears and insert in its place the following. Go ahead, Mr. Dixcy, read it.

Mr. Dixcy: (Reading):

"Summary of the stocks in banks, turnpike, bridge and navigation companies, whose properties were wholly in the limits of West Virginia, received from Virginia by West Virginia, and also a summary of the stocks in certain turnpike companies, and the James River and Kanawha Company, whose properties were partly in each State; and a certain loan to the town of Bath, not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, April 17, 1861."

The Special Master: This application is in the nature of a change indirectly in the testimony of Mr. Dixcy. I shall allow it, and now subject him to cross examination by counsel on the other side. Of course, I would allow any witness to make a change in his testimony if desired to do so.

Mr. Anderson: The point I have in mind is the manner in which this correction should be made. That Exhibit G-1 has already been made a part of his testimony, and he finds now he was mistaken in the caption of that paper, which was a part of the paper as to

which he testified, and to the whole of which his certificate relates, except certain endorsements. Of course he ought to be allowed to correct that, and we cannot make any objection to 871
it now being put into the record that Mr. Dixey desires to correct that caption and the statement implied by the caption, and to make a statement that he is now satisfied agreed with the facts.

The Special Master: What you want is, first the schedule as it was originally put in?

Mr. Anderson: Yes sir.

The Special Master: And then you want the correction to appear?

Mr. Anderson: Yes sir.

The Special Master: I think that is proper. I treat all of these schedules as the testimony of each of these experts. If either expert, before this hearing is finished, has reached the conclusion that he has made a mistake, I shall feel bound to allow him to correct it. If it is a mistake of a character that impeaches the verity or the weight to be given to it, it is open to the other side to comment upon for cross examination, and I will give it all the consideration to which it may be entitled. Now, the present status of this matter is that Mr. Dixey has testified, as appears in defendant's Exhibit G-1, and as to the heading of that Exhibit he desires to make a change in his statement. He desires to make a change and I will allow it.

Mr. McClintic: And no other change. It is not changed in any other manner.

The Special Master: Of course that appears.

Mr. Anderson: What is the revised caption.

Mr. Dixey: The stenographer has it.

Mr. Anderson: I would like to hear that.

(The Stenographer read aloud the revised caption, as here- 872
inbefore recorded.)

Mr. Carlisle: As I understand the situation, that heading which Mr. Dixey now proposed just simply embraces the facts which the paper itself shows?

The Special Master: Well, if they contend otherwise, of course that is open to them. And then in answer to that contention it is open to you to set up the contention you now suggest.

When you say "stocks in banks," do I correctly understand that you mean the particular stock that the State held in the banks?

Mr. Dixey: Yes, sir.

The Special Master: The extent to which the State was a stockholder?

Mr. Dixey: Yes, sir. I may say that is the heading of the summary: The headings of the sub-schedules, of which there are several, of course will be changed accordingly.

The Special Master: Well, if they require it, I think you ought to submit to them such change as you think ought to be made; so they will have an opportunity to criticise it if they desire to do so.

Mr. Harrison: That affects his entire testimony.

The Special Master: If they insist on it, of course I think I would have to require him to make the changes he makes so that the other side may see just what they are. What do you say about that?

Mr. Anderson: I think we ought to know just what changes are made. 873

The Special Master: Very well. Mr. Dixey, then I will have to ask you to submit such changes as you propose to make so that the other side may have an opportunity to see them and cross examine upon them.

[*Vol. 7. July 1, 1909. Agreement relating to depositions on behalf of West Virginia.*]

The Special Master: * * * * * * * We will go to paragraph 7. 877 So far as I can see, and I would be glad to have the suggestion of counsel on either side—down to this stage we are in the condition where we cannot go on with any testimony to-day.

Now, coming to paragraph 7, what do you say as to that, paragraph 7 being—

> "The amount and value of all money, property, stocks and credits, which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored Government of Virginia together with the nature and description thereof."

Mr. Harrison: The amount is agreed to, as it appears of Vir- 878 ginia's Exhibit.

Mr. Carlisle: The amount that Virginia has paid is agreed, but not the value.

Mr. Harrison: But we agree as to the amount.

Mr. Carlisle: We disagree there on the sum of $170,000; and what items does that include?

Mr. McClintic: All the items paid by Virginia.

Mr. Anderson: $150,000 paid at one time, and $20,000 paid at another time. It is not denied that she received that money, but West Virginia denies that she should be charged with it.

The Special Master: Here is the schedule. As to this, I think they agreed on the amount, did they not?

Mr. Anderson: Yes, sir.

The Special Master: Are you prepared to-day to be heard on either side of the question of any additional evidence establishing the propriety or the impropriety of these items being allowed under paragraph 7? Of course, in the first instance, I would hear Virginia. If you have anything to submit on that, you can submit it.

Mr. Anderson: We have not any additional evidence. West Virginia admits that the money was paid.

The Special Master: Have you any additional evidence on the propriety of making the charge, or is everything in the case that you rely on?

Mr. Anderson: In the case or in the record. I mean the acts of Assembly of West Virginia?

The Special Master: You, of course, want to have this in mind, so as not to have any mistake. If you rely on Acts of West 879
Virginia as probative, I think they ought to be submitted now, if they are not already in. Whatever you have in the way of public records that you rely upon to sustain your contention that this ought to be made a part of paragraph 7, you ought to submit.

Mr. Anderson: They are already in the record. That is, they are in the bill.

The Special Master: The bill has not been put in the case yet, not before me.

Mr. Anderson: There are copies of those statutes already in this record.

The Special Master: All right. And if you have the acts on which you rely recited in your bill in equity, that is all right. If that is a fact, I do not think you need anything more; and especially after having called attention to it, so that the other side know what you rely on. Do you disagree about that, Brother McClintic?

Mr. McClintic: I beg your pardon.

The Special Master: They say that all the Acts of the Legislature in connection with this paragraph 7 upon which they rely, the acts of the State of West Virginia, are in record.

Mr. McClintic: They are acts of Virginia.

Mr. Anderson: The restored Government of Virginia.

Mr. Carlisle: The two acts of February, 1863, and (gives another date).

Mr. McClintic: If I have not put those in I want to put them in.

The Special Master: If they are in the bill in equity, if they are simply recitals of acts of public legislation in the pleadings 880
in the case, so that they can be referred to, that is sufficient so far as I am concerned.

Mr. Anderson: Those acts have been filed by both sides.

Mr. McClintic: Those printed books are mere memoranda, a good

deal of them, but the three acts referred to are already in evidence, I think. If not, I want to put them in evidence.

The Special Master: Did you make a memorandum of what acts you relied on?

Mr. Anderson: No, not yet. I called on the Attorney General of West Virginia for an act he wanted, so we would not have duplicates.

Mr. McClintic: That matter was referred to me, and for some personal reasons, which I can state if desired, I was unable to attend to it.

The Special Master: You need not go into the reasons. Then, so far as the plaintiff's Exhibit Substitute Exhibit G-1 either party has any additional evidence to submit, the understanding being that the Acts of the Legislature upon which each party relies are either now in or will be put in and attention called to them by counsel on either side?

Mr. McClintic: The record already shows a report of the Auditor of Virginia, which I called your Honor's attention to, and which I will put in and again call attention to. It is already in the record.

The Special Master: You simply have not pointed it out? 881

Mr. McClintic: Yes, sir.

The Special Master: The book is in?

Mr. McClintic: Yes, sir.

The Special Master: That is already in, then. The question now is whether it is desired on either side to offer any additional evidence on this. I understand that additional testimony is not desired on either side. Subject to the understanding that the Acts of the Legislature are either in or are to be put in, the case is closed so far as that is concerned.

Mr. McClintic: The report of the auditor.

Mr. Carlisle: There is the report of the auditor—

The Special Master: I understood him to say that was in. What do you say about that?

Mr. Harrison: I have not seen that yet.

Mr. Anderson: Mr. McClintic says he will furnish that, an extract from the report of the Auditor.

The Special Master: I understood him to say that the book was in.

Mr. Anderson: The book was produced, but I did not understand that the whole of it was offered in evidence.

The Special Master: Let us find out. Brother Anderson suggests that while the book was here at the last hearing he did not get the impression that it was offered in evidence.

Mr. Carlisle: What book?

The Special Master: The Auditor's book. 882

Mr. McClintic: No, I don't want to put that whole book in. I was just putting in a page or two of it. I have not put the book in. I said that was the book that Mr. Scoville and you wanted—

The Special Master: Is there any objection to this understanding? The whole book is offered and admitted in evidence, but only so much of the book will be printed as counsel on either side desires. Does that cover it?

Mr. Anderson: Yes, sir.

Mr. McClintic: That covers it.

The Special Master: Now, is it feasible to continue the hearing any longer to-day?

Mr. McClintic: I want to introduce some depositions which we took during recess.

The Special Master: And they relate to what paragraph?

Mr. McClintic: The value of stock. They relate principally to paragraph 7. They are depositions of a list of witnesses which the stenographer can take down.

Mr. Carlisle: I do not think it is necessary to print them in full.

The Special Master: You can print so much of them as you desire.

Mr. McClintic: Then we desire an agreed statement between the Attorney General of West Virginia and the Attorney General of Virginia.

Mr. McClintic: As to the condition of the roads there—

Mr. Carlisle: That is not very long, and perhaps we had better put it in the record.

The Special Master: We can do this. We will agree to put 883 in such part of it as you want.

(Counsel for West Virginia submitted the following paper, above referred to):

"Commonwealth of Virginia,

vs.

State of West Virginia.

PENDING IN THE SUPREME COURT OF THE UNITED STATES.

Agreement between Plaintiff and Defendant as to certain matters matters of proof.

It is agreed upon by William A. Anderson, Attorney General of Virginia, of counsel for and on behalf of the Commonwealth of Virginia, and by William G. Conley, Attorney General of West Virginia, for and on behalf of the State of West Virginia, that competent and credible witnesses who can be called on behalf of West Virginia will testify to the following facts:

FIRST—BRIDGE COMPANIES.

(1) That the bridge across the Buchannon River, in the County of Upshur and State of West Virginia, near the Mill of Carper and Post, and owned by the Buchannon Bridge Company, was destroyed in the month of April, 1863.

(2) That the bridge across Cheat River, in the County of Preston and State of West Virginia, at the point where said river was crossed by the Brandenville, Kingwood and Evansville turnpike, and owned by the Cheat River Toll Bridge Company, was destroyed in April, 1863.

(3) That the bridge across the North Branch of the Potomac 884
River at the point where said river was crossed by the Cacapon and North Branch turnpike, in what is now Mineral County, State of West Virginia, and owned by the North Branch Bridge Company, was destroyed in the year 1862.

(4) That the bridge across the South Branch of the Potomac River, in Hampshire County and State of West Virginia, and owned by the South Branch Bridge Company, was destroyed in 1862.

(5) That the bridge across the Potomac River at Shepherdstown, in the County of Jefferson and State of West Virginia, and owned by the Virginia and Maryland Bridge Company, was destroyed in 1861.

(6) That the bridge across the Guyandotte River, at or near its mouth, in the County of Cabell and State of West Virginia, and owned by the Guyandotte Bridge Company, was not destroyed, but that the same did not pay any dividend to the owners thereof after the State of West Virginia was formed.

(7) That the bridge across the Monongahela River at Morgantown, in the County of Monongahela, and owned by the Morgantown Bridge Company, paid no dividend after the State of West Virginia was formed, and that the stock was of no practical value.

(8) That the bridge across the Monongahela River at Fairmont, in the County of Marion and State of West Virginia, and owned by the Fairmont and Palatine Bridge Company, did pay to the State of West Virginia a dividend of six per cent per year for several years after the end of the war, on the par value of the stock of twelve thousand dollars assigned to the State of West Virginia 885
therein.

(9) That the bridge across Elk River at Charleston, in the County of Kanawha and State of West Virginia, and owned by the Elk Bridge Company, was destroyed in 1862.

SECOND—NAVIGATION COMPANIES.

(1) That the Monongahela Navigation Company spent no money on the Monongahela River after the year 1825, and that long before

the year 1863 all evidence of such work had disappeared and that the stock in said company was of no practical value on the 20th day of June, 1863.

(2) That the amount of money spent by the Tug Fork Navigation Company on the Tug Fork of Big Sandy River was of such a small amount that no evidence of such work remained on the 20th day of June, 1863, and that the stock in said Company was of no value as of that date.

THREE—TURNPIKE COMPANIES.

That the turnpikes owned by the turnpike companies in the Counties of Monongahela, Preston, and other counties of northern West Virginia, had no work of repair done at all on them during the war period and that many of them were cut to pieces by the army travel thereon, and by rains, snows, and high waters, and that many of them became in places and for considerable distances before and after the 20th day of June, 1863, practically impassable, during wet weather, and for a considerable period of time, and that no dividends were ever received from any of them after the State of West Virginia was formed. 886

But said counsel for Virginia respectfully excepts to the competency and pertinency of said evidence and facts to any issue in the cause.

May 21, 1909.

WILLIAM A. ANDERSON,
Attorney-General of the Commonwealth of Virginia.
WM. G. CONLEY,
Attorney-General of the State of West Virginia.

[*Vol. 7. July 2, 1909. Statement to Be Made of Roads Paying Dividends.*]

1012

The Special Master: It is understood that you wanted to take the deposition of this other witness?

Mr. McClintic: Yes, sir.

The Special Master: Who is he?

Mr. McClintic: Judge Atkinson.

The Special Master: Is it agreed that the defendants may take the deposition of Judge Atkinson and file it as part of the case?

Mr. McClintic: And possibly Mr. Scoville?

Mr. Harrison: I do not think there is any excuse for Mr. Dixey not being able to answer questions put to him.

The Special Master: What do you want to show by him?

Mr. McClintic: That certain roads paid dividends, and at other times did not pay dividends.

The Special Master: What physical difficulty is there in having Mr. Dixey and Mr. Potter agree on those facts?

Mr. McClintic: I think there is none.

The Special Master: I think there cannot be any. They are 1013 all shown by the books.

Mr. Harrison: We object to the taking of testimony by deposition, from these experts.

The Special Master: This is, to an extent, an incidental matter. It is important, perhaps; but as to this matter I understand that the parties now agree that Mr. Potter and Mr. Dixey may submit a joint statement to become a part of the record, upon this question of—what items?

Mr. McClintic: As to the roads and bridges that paid dividends and those that did not.

The Special Master: There cannot be any difficulty about that. Is that agreed on? Let it be recorded that it is so agreed.

Mr. Harrison: I cannot see the relevancy of that.

Mr. Anderson: We object to it.

The Special Master: That is all right. It is agreed that the experts shall submit, to become a part of the record, a joint statement on the question of the roads and bridges that paid dividends, and the amounts paid; but Virginia objects to its relevancy or competency. That settles that item.

Mr. Anderson: That statement ought to show what became of the dividends.

Mr. McClintic: It is all in the record, as to what became of the dividends. * * *

Mr. Moon: As to the dividends, we ought to put in a re- 1015 port.

The Special Master: In the statement that is to be made by the experts in relation to the dividends received, the experts are to submit at the same time a statement showing what the difference between them is, what the records show as to what application was made. There is no difficulty about that. Is that all?

Mr. McClintic: Suppose it would develop that these experts cannot agree?

The Special Master: Then, if the experts do not agree, we will have another meeting, and I will hear the evidence on both sides. If they do not agree about that, I will pass on it later. I shall pass on it in New York.

[*Vol. 7. July 2, 1909. Further as to Change of Heading on Defendant's Exhibit G-1. Joint Statement Relating to Literary Fund.*]

1019

Mr. McClintic: Exhibit G-1, it seems, was not properly understood yesterday. We put in a change of the heading on page 2.

The Special Master: Yes, with the understanding that you would change the other sub-headings.

Mr. McClintic: And we struck out the heading on the top of page 3.

The Special Master: You need not spend a minute's time on that. If that is a proper subject of criticism I will hear it in the argument.

Mr. McClintic: Then we changed the word "property" to "stock"; and after the word "received", we put the words "wholly or partly".

1020

The Special Master: Any other changes?

Mr. McClintic: That is all.

The Special Master: Is there anything else for me to decide?

Mr. McClintic: On our Exhibit G-1, we withdrew $2,400,000.

The Special Master: I remember that.

Mr. McClintic: I want to have Mr. Dixcy and Mr. Potter make a statement and let it go in afterwards with their other statements, showing the amount of the Literary Fund on the 19th of March, 1823, the amount the first of March, 1861, and where that $24,000 came from.

The Special Master: I understand that a statement may be submitted jointly by Mr. Potter and Mr. Dixcy covering this. I think that settles that.

Mr. Harrison: We do not agree to anything that involves any delay.

The Special Master: You are safe on that, because your expert has got to sign it.

Mr. Harrison: The only other question is how long will they be allowed to take Judge Atkinson's deposition?

The Special Master: I think that has been agreed upon, that it must be taken within the next two weeks, subject to the same conditions fixed by the Master heretofore.

Mr. McClintic: And possibly there will be one or two other witnesses, if you do not object to it.

The Special Master: There will be no other witnesses unless admitted by Virginia. If you want to have other witnesses, and you agree to it—

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Mr. Anderson: And we ought to have an opportunity to cross examine.

Mr. Special Master: Certainly. A deposition will not be considered unless you have such opportunity. If they have developed anything in connection with the deposition of Judge Atkinson that it seems

necessary for you to take testimony upon that subject, that, in my judgment, raises a serious question in connection with this case. It would be incumbent that you agree that they might take any deposition in reply; or if it did, that a serious question of that kind, I should probably open the case.

Mr. Conley: I suggest you limit them to the same time you limit us.

The Special Master: I do; I limit them to one week. West Virginia may have two weeks' time in which to take the depositions referred to, and any depositions in reply on the part of Virginia must be taken in one week from the time the deposition on the part of West Virginia is taken.

[*Vol. 7. Depositions on Behalf of West Virginia Copied into the Record.*]

In the Supreme Court of the United States

Commonwealth of Virginia,
vs. 1105
State of West Virginia.

Index to the following depositions. May 20, 1909:

Peter E. Love 1107
Frederick Lee Baumgardner 1110
B. F. Swann 1112
William Griffith 1116
Henry V. Sattes 1122
W. F. Gregory 1126
James H. Wright 1128
James M. Payne 1132
Dr. C. I. Lewis 1133
John Slack 1136
William H. Tompkins 1142
Charles W. Dering 1150
May 21, 1909:
J. K. Thompson 1153
Thomas Swinburn 1159

Depositions of witnesses taken by the State of West Virginia 1106
to be filed and read as evidence in her behalf in the cause of the

Commonwealth of Virginia against the State of West Virginia, pending in the Supreme Court of the United States, which depositions are taken by the consent of parties, beginning on the 20th day of May, 1909, at the law office of Mollohan, McClintic and Matthews, in the City of Charleston, County of Kanawha and State of West Virginia.

Present on behalf of the defendant, the State of West Virginia, Wesley Mollohan and George W. McClintic, of counsel.

Present on behalf of the Commonwealth of Virginia, William A. Anderson, Attorney General of Virginia.

PETER E. LOVE, 1107

a witness of lawful age, being first duly sworn, deposes and says:

(Examined by Wesley Mollohan, Esq.:)

Q. State your name, age, residence and occupation.

A. Peter E. Love, I will be 76 years old on the 13th of June; I am a farmer; and live at Martha, in Cabell County, State of West Virginia.

Q. How is your residence situated as to the Guyandotte River?

A. When I first moved there my farm was lying right on the bank of the River; now it is 400 yards back.

Q. How long have you lived at that place?

A. 56 years last February.

Q. How far is your residence from the mouth of the Guyandotte River?

A. Well, by water—Well, I guess it is 13 miles, that is, the way the railroad runs.

Q. Do you remember when the locks and dams were built in the Guyandotte River?

A. When I moved to Cabell County from Putnam County, in 1853, the locks were mostly completed. That is my recollection. I think they were completed then in 1853. I think they finished them that year.

Q. How many of them were there?

A. Six, I think.

Q. How were those locks and dams constructed—of what material?

A. Wood and stone; cribs built of round logs, timber, and filled with stone.

1108

The counsel for complainant excepts to this question and answer as not responsive to any inquiry directed by the decree of reference and as not pertinent to any issue in the cause.

Q. Are any of those locks and dams in the river now?

A. No, sir.

Q. What became of the locks and dams?

A. In September, 1861, the big rise we had in 1861 partially destroyed some of them, filled them up and washed around some of them. I don't know much about some of them above. But I know they weren't much used. I lived at lock No. 3—just about a half a mile above it.

Q. When did they cease to use them?

A. Never used them after the fall 1861.

Q. What finally became of the remains of the locks and dams?

A. In various ways they went out. The timber rotted; the timbers would naturally rot, you know; they rotted down and washed out.

Q. Of what value for navigation purposes was that system of locks and dams after the big rise of 1861?

A. They were worthless after 1861, because they were an obstruction in the way.

Q. Was there any attempt to repair them after the big rise of the year 1861?

A. Not to my knowledge.

Q. Were they cleaned out of the river, and if so, about when?

A. Well, I couldn't tell you. I know there was; but I don't know whether the State made an appropriation for the clean- 1109
ing out of those locks and dams; I know they did make an appropriation to clean out the river, and it occurs to me that they did take out some of those locks and dams. The dam at my place now, after the War closed, was lowered and used for mill purposes, for a mill at that point; but the lock was destroyed and was never used for navigation purposes.

Q. What was the character of the big rise of 1861?

A. You mean as to the amount of water?

Q. The bigness of it, and so forth?

A. Well, I do not remember what the height of that rise was, and I cannot tell you. Mr. Swann can tell you more about that than I can.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause.

Further the witness sayeth not.

FREDERICK LEE BAUMGARDNER, 1110
a witness of lawful age, being first duly sworn, deposes and says:

(Examination conducted by Wesley Mollohan, Esq.:)

Q. Where do you reside, what is your age, and what is your occupation?

A. Well, I live a mile and a half west of Barboursville, in the neighborhood commonly called Pearidge, Cabell County, West Virginia; I am even 60 years old, and my occupation is that of farming.

Q. How far is your residence from Guyandotte River?

A. Only a mile and a half towards Barboursville.

Q. How long have you lived in that neighborhood?

A. Well, I went there when I was six years old; now, to make the calculation, I am 60 years old, so that would be 54 years the 7th day of last March.

Q. You were living in that neighborhood when the locks and dams were built in the Guyandotte River, were you?

A. Yes, sir. They were working there. I don't know how long they had been working on them.

Q. Of what were they constructed?

A. Out of timber, round logs, and broken up stone.

Q. What one of the locks was nearest to you?

A. The second lock—Barboursville.

Q. What became of the locks and dams?

A. Well, that one particularly was closest to my attention in this big rise in 1861. The water got around it on the west side, and the main river ran around it.

Q. Was it ever repaired or used after that time?

A. No, sir.

Q. Had you occasion soon after that rise to observe the con- 1111
dition of any of the other locks and dams?

A. Well, no, sir. Except the lower dam Guyan, or a mile, I believe they call it, above Guyan. I passed it, I suppose, two or three weeks after that, and I didn't see it was damaged any. It may have been, but I didn't pay close attention to it.

Q. Did you ever afterwards observe its condition?

A. At any time afterwards?

Q. Yes.

A. Oh, yes; it finally washed and rotted out.

Q. What use, if any, was made of the locks and dams after the beginning of the war?

A. There wasn't any.

Q. Of what value were the said locks and dams for the purposes of navigation after the rise of 1861?

A. Well, not any.

Q. What finally became of the remains of the said locks and dams?

A. The timbers rotted down, rotted out, and the stones dropped away. That made little islands in the river, and timber grew upon them.

Q. After the War commenced what care was taken or what repairs were made to the said locks and dams?

A. There wasn't any, to my knowledge.

Q. Did you say there wasn't any?
A. Yes, sir; I said there wasn't any.

And further the deponent sayeth not.

The counsel for complainants excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause. 1112

B. F. SWANN,
a witness of lawful age, being first duly sworn, deposes and says:

(Examination conducted by Wesley Mollohan, Esq.:)
Q. State your age, residence, and occupation.
A. I was 76 years old last October; I live in Barboursville, Cabell County, State of West Virginia; I generally follow blacksmithing, wagon-making, and so forth, farm a little, even.
Q. How is Barboursville situated as to the Guyandotte River?
A. Right on the bank of Guyandotte River.
Q. How long have you lived there? How long have you lived at Barboursville or in that neighborhood?
A. I have lived there since 1866. I moved there in 1866.
Q. Where did you live before that?
A. At what we know as the Dusenberry Dam, at Lock No. 3 of the Guyandotte River.
Q. How long did you live there?
A. I have lived there 11 years before I moved to Barboursville.
Q. Do you remember when they constructed the locks and dams in Guyandotte River before the War? 1113
A. Yes, sir. They commenced working, I reckon it was 1850. The first work that was begun was at Lock No. 3; then Salt Rock in the fall. Salt Rock was the second lock going down the river from the falls. Lock No. 3, they called it, then No. 4. They built a lock between that and Salt Rock.
Q. How were these locks and dams built?
A. What they call crib work—wood work, large round logs, partly hewn, some of them, and some of them were not. Where the planks had to be put on, they were hewn there. They were trimmed together. Then they filled them with broken up stone; then planked over with heavy plank. Piling was drove above to keep the water from cutting.
Q. What connection, if any, had you with these locks and dams?
A. I kept lock No. 3 for five or six years.
Q. What finally became of those locks and dams?

A. They went to naught.

Q. What, if anything, was done to those locks and dams, or repairs made to them after the beginning of the War?

A. None, virtually none; nothing much to do, no use to take care of them.

Q. What, if ever, were they abandoned for navigation purposes?

A. That is hard to tell. They were abandoned, of course, when there was nothing to do.

Q. Were they used for navigation purposes in the year 1861 1114 or thereafter?

A. They were used for navigation purposes a little in 1861, mighty little. They were in the spring. A good deal of timber came out of Guyandotte, in the spring of 1861. They had to go over the locks.

Q. What effect, if any, had the high waters of 1861 upon the locks and dams?

A. Had pretty bad effect; damaged them a great deal first and last. Some of them it didn't damage; others it did.

Q. Was any effort made to repair such damage?

A. No, sir.

Q. What finally became of the locks and dams?

A. Gradually wore out and went under.

Q. What was the condition of those locks and dams in the summer of 1863?

A. Well, they were just about equal to what they were in the beginning of 1862. I didn't see any difference so far as the condition was concerned. They were just about the same. There was no use for them, and they were not used from 1861 to 1863. There wasn't anything to go up or down the river.

Q. Of what value were they as a system of navigation after the year 1861?

A. Well, I couldn't tell you, so far as that is concerned. If they had been looked after and kept up as they had been before that—it took a whole lot of repair work to keep them up before that for the custom and trade of the locks and dams. It took a heap of repair work to keep them up. The lock I kept on the river paid 1115 more than any other one lock on the river. That was Lock No. 3. During high water big pools of water—back water—very often rose over these dams, and they didn't have to go through the locks. They would go over the dam. Of course, steamboats hardly ever went over the dams when they could get to the locks.

Q. Were they used in the navigation of steamboats after 1861?

A. There wasn't any; there wasn't any steamboats used after 1861. There was during 1861 a little trade by steamboats.

Q. What time in 1861?

A. In the beginning of 1861, until about June, I reckon it was. One of the little steamboats sunk between Smith's Creek and Salt

Rock; I think it was in the spring of 1861. There was nothing more to do, anyhow.

Q. What became of the remains of said locks and dams?

A. It would take more people than me to answer that. I don't know what became of them. They disappeared and went to nothing —washed out, washed around, broke. Mr. Love said they rotted, but he is mistaken about that, they weren't rotten. They weren't old enough to rot. But the water cut out a place below to let these loose rock drop, and broke off the plank above. The timber was sound; could not be otherwise. They put in there all oak timber. They weren't old enough to rot.

The counsel for complainant excepts to all the testimony of witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause. 1116

And further the deponent sayeth not.

WILLIAM A. GRIFFITH,

a witness of lawful age, being first duly sworn, deposes and says:

(Examined in chief by Wesley Mollohan, Esq.:)

Q. State your age, residence, and occupation.

A. My age—I cannot swear to my age; but I think it is 82 years. I think I will be 82 years old the 5th day of next month. I reside in Kanawha County, West Virginia.

Q. On what stream?

A. Dry Fork, at Alcott.

Q. What is your occupation?

A. What is my occupation? I haven't got any now. I have always been a river man, but at this time I am only gardening a little at home. I have got no occupation at all. I am not a farmer. I don't think I have got any.

Q. How close is your present residence to Coal River?

A. Four miles.

Q. Did you ever live on Coal River; if so, at what place?

A. I lived a year or about 18 months at lock No. 3 on Coal River, right on the bank. And I might state here that I had charge of the river, or my family did. I had charge of a steamboat.

Q. When did you move to Coal River? 1117

A. I don't remember that.

Q. About what time?

A. Well, I think it was about 1871 or 72; I couldn't tell that very clearly. I could have given you a heap better statement if I had known what I was coming for.

Q. Do you remember the time the first locks and dams were built in Coal River?

A. I cannot give you a perfect date of that; but I think it was about 1856 or 57, somewhere along there.

Q. Where were you living then?

A. I was a young man then, here in Charleston and on the Kanawha River. I didn't have any certain home at all.

Q. Where were you living in the year 1861?

A. I was living in the year 1861 on Brier Creek.

Q. How far from Coal River?

A. Four miles.

Q. What business were you engaged in at that time?

A. I was flat boat piloting on the river, boating for salt companies.

Q. How were those locks and dams constructed?

A. They were built of wood and stone. They made a frame of wood and then filled it with stone.

Q. Do you remember the big rise of 1861?

A. Yes, sir.

Q. What effect, if any, did that rise have upon the locks and dams in Coal River?

A. That rise washed out quite a lot of the locks and dams. 1118
It didn't wash the dams out so much as it washed around the locks and cut in the banks around them.

Q. Where were you living in the year 1862, Captain?

A. I was trying to fight for Jeff Davis.

Q. What time did you go into the Army, Captain?

A. 1862, the first of the year, I think.

Q. What use was made of that old system of locks and dams for navigation purposes, after the beginning of the War?

A. There was none, sir. The locks—some of the locks were entirely dismantled, and there was no lockage through them; that is, so far as I know anything about it. I think I am right.

Q. Of what value was that old system of locks for navigation purposes after 1861?

A. Mr. Mollohan, you are asking me questions, and I will ask you one: From 1861 to when?

Q. Until 1862 or 1863—until you left.

A. From 1861 to 1865 they were of no use to anybody at all. They were dismantled. There was no locking through. You could not get through them. They were a retard actually to navigation.

Q. When were the locks and dams rebuilt in Coal River?

A. Well, I will not be certain, Mr. Mollohan, but I think it was in 1866.

Q. Who rebuilt them? Who rebuilt the locks and dams?

A. Major Cupp was the contractor.

Q. Was it by the same company that built the original locks and dams? 1119

A. That was my understanding, sir. I do not know.

Q. What was the name of the last company?

A. Coal River navigation Company.

Q. What was the name of the old company that built the first locks and dams?

A. The old company—I don't know. The old locks and dams were built, I think, by the Peytona Canal Coal Company. They furnished the money; but they might have had another name for it.

Q. Did you ever hear of the name of the navigation company of Coal River used in connection with the first locks and dams put in the river?

A. I don't know who were the officers of that company; but they had two companies—the Peytona Canal Coal Company, and the navigation company. The Peytona Canal Coal Company put up the money all the time; but there were two names to it.

Q. When did you first become a pilot on the Kanawha River?

A. In 1854.

Q. What was the character of the services you rendered as pilot on the Kanawha River?

A. My services were simply to run boats through the channel to get them to market.

Q. What kind of boats?

A. Flat bottom boats—salt boats. That is what we called them.

Q. What did you ship in those boats?

A. Shipped salt; and latterly before I came they commenced 1120 to ship coal.

Q. When did they commence to ship coal by flat boat?

A. That is another thing I can't tell you by date—perhaps somewhere along about 1856.

Q. How extensive was the shipment of coal?

A. Oh, there wasn't any shipping of coal except by one company—the Fields Creek Company.

Q. Had there been constructed any shoots or channels in the river before you commenced piloting on the Kanawha river?

A. Yes, sir.

Q. What was the character of those shoots?

A. Well, they were very oddly constructed, so far as my knowledge goes. They were crooked and very hard to navigate.

Q. How wide were they?

A. They were supposed to be 24 feet wide. They threw these walls up. Boats 18 feet wide would grind on shores of each wall. They were not wide enough to let boats go though free.

Q. Were they generally used for the purpose of sending boats out of the river, or was it the custom to wait until the river got up to run the boats out on the flood?

A. They were used for shipping salt out in low water; but the boats were held very often for a rise to go over these walls.

Q. What loss or destruction occurred in the navigation of these shoots?

A. Why, a great many times the boats would strike the 1121
walls—men couldn't get them off, and they would sink. They caused a good deal of destruction to the operators, to the salt mines.

Q. What is your opinion, as a pilot, of the way these shoots were constructed for navigation purposes?

A. My opinion is, Mr. Mollohan, those shoots were very badly constructed, and were not in accordance with good sense in making channels. You can take that as you please.

Q. What use was made of them in steamboat navigation?

A. Why the steamboats had in many places to run those channels.

Q. How was it when steamboats were going up the river?

A. Why, they could make the channels a great deal of the way, but there were places they couldn't go through. They had to come around. That is where the great trouble is about that navigation. They made them so crooked. They would rather have a straight channel. I am both a steamboat man and a flatboat man.

Q. What is your opinion as to the effect of the construction of those shoots on the navigation of the Kanawha River as it then existed?

A. Do you mean before the War?

Q. Yes, sir.

A. I believe they were an obstruction to the navigation.

Q. What improvements were made to the navigation of the Kanawha River after the War?

A. I don't know. 1122

Q. Were not many of the shoots changed and widened after the War and before the Government of the United States put in the locks and dams?

A. Mr. Mollohan, I think the shoots haven't been bothered since the contract with Barton was finished. If there was any improvement, I don't know of it. He had a contract to change these shoots. He closed it about the beginning of the War. He and his sons were working here, and his son went off in the Confederate Army, and it hurt the old man very much. The son died in the Confederate Army the same year.

The counsel for complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further deponent sayeth not.

HENRY V. SATTES,

a witness of lawful age, being duly sworn, deposes and says:

(Examined by Wesley Mollohan, Esq.:)

Q. State your name, age, residence and occupation.

A. I am past 65; I live at the lower falls of Coal River; I am in the milling business at that point.

Q. Where did you live in the year 1861?

A. I lived at the lower falls. 1123

Q. What was your business then?

A. Milling.

Q. At that point?

A. Yes, sir.

Q. Were you acquainted with the locks and dams built in Coal River before the War?

A. I was acquainted with the bigger portion of them on up to No. 4; I had never been above that.

Q. How were they numbered going up the river?

A. They commenced at the first lock at the mouth of the river and numbered up.

Q. How?

A. 1, 2, 3, 4, 5, 6, 7, 8. The lock on Little Coal River was numbered "A".

Q. How were those locks constructed? I mean of what material?

A. Wooden pens filled with stone—cribs.

Q. How were the dams constructed?

A. Same way.

Q. Where were you at the time of the big rise in 1861?

A. I was at the lower falls of Coal.

Q. What effect had that rise on Lock No. 1?

A. I don't think that rise had any particular effect on Lock No. 1. There was a later rise in the winter of 1861-2, that wrecked the lock, and also wrecked No. 2 lock.

Q. How did it wreck them?

A. Well, it washed the top of the dam off of one, I think, to 1124 the best of my knowledge. It broke the cribs of No. 2 and dismantled the gate, and the whole river ran through the crib work above the locks.

Q. When lock No. 2 was rebuilt after the war, was it located at the same place?

A. The lock was located at the same place. They first built on the opposite of the river. They located the lock at the same place, but moved the dam lower down the river.

Q. What effect did it have on lock 3?

A. Well, I don't think that fall had any particular effect on lock 3. It might have lost some of the rigging off of it. But by the end of the war it was gone—knocked and washed to pieces.

Q. How was it as to the locks above that?

A. I don't know, only from hearsay. They were all wrecked above that. There wasn't any locks of any use. People who came to the mill told me that locks No. 4 were all right.

Q. When they reconstructed Lock No. 1 after the War, what did they do to it?

A. Built a new dam; built a new lock.

Q. When the War broke out, what care or attention was paid to those locks and dams?

A. Well, they were working on the locks and dams repairing them, right just at the time the War broke out; but just at the middle of the summer, high water came up, and there wasn't any more done until the end of the War.

Q. Did anybody take care of them?

A. Not that I heard of. 1125

Q. What use was made of them for navigation purposes after the beginning of the War until they repaired and reconstructed?

A. There wasn't any; only one lock on the river they could make any lockage through, and you couldn't get out or in it, because there wasn't any water above or below. That was No. 3.

Q. What use for navigation purposes were those locks and dams in the year 1863?

A. There wasn't any.

Q. What company rebuilt the locks and dams after the War?

A. I think the navigation company of Coal River.

Q. What came of the locks and dams put in the river after the war?

A. Well, they were used until the Peytona Company quit working. They abandoned them. Irons taken off. They were just let go.

Q. Any use made of them now?

A. No, sir; there are no locks in the river.

Q. How is it as to dams?

A. There isn't any but one, No. 1, built in 1867, and kept up by the Bowman Lumber Company.

Q. For what purpose did they use it?

A. To make a pool to handle logs with. By the way, that dam is a few feet higher than No. 7 in the Kanawha.

Q. In the wreckage of these locks and dams, what change did the floods make, if any, to the locks, that is, did it move any of the locks in the river? 1126

A. No, sir; it never moved any of the locks; that is, the foundations. It would just take the tops off and the cribs off.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

W. F. GREGORY,

a witness of lawful age, being first duly sworn, deposes and says:

Questioned by Wesley Mollohan, Esq.:

Q. State your age, residence and occupation.

A. I am 75 past; my residence is Kanawha County, Lock No. 7, West Virginia; and I am a steamboat Captain and Pilot.

Q. How long have you lived on the Kanawha River?

A. Well, I was a year old when I came out from Richmond here. I was born out there, and my father moved over here.

Q. Have you lived on the Kanawha ever since you came to this section of the country?

A. No, sir.

Q. Where else did you live?

A. At Cincinnati, when I wouldn't be on steamboats. I was a young man, then single.

Q. On what river have you been captain and pilot?

A. On the Kanawha and Ohio Rivers; and on Western rivers 1127 as captain.

Q. Were you ever engaged in navigation of flat boats on the Kanawha River?

A. No, sir, only made a few trips with pilots, as a hand. I made the first trip with this man, Captain Griffith.

Q. Were you acquainted with the shoots constructed in the Kanawha River before the War?

A. Well, acquainted, sir, since 1849.

Q. What was their character—how were they constructed?

A. Badly constructed; very crooked and narrow channels.

Q. How extensively were they used in navigation of the Kanawha River?

A. Very little; few steamboats and salt boats.

Q. What parts of the river were used in the navigation of steamboats—the shoots or other parts of the river?

A. I ran the shoots where I had to do it. When there was plenty of water, I didn't have to run them. I ran straight, the way they ought to have been made.

Q. What is your opinion, as a pilot, as to the value of those improvements to the navigation of the Kanawha River?

A. Those old shoots? Very little, sir. They made crooked, the natural course where the waters ran, and crooked they made the channel, the way God Almighty made it.

Q. What improvements were made in the shoots or channels after the War in the Kanawha River?

A. A good deal; made a good river. 1128

Q. How were the new shoots constructed as to the old ones?

A. They were run straight and wider.

Q. After the construction of the new shoots after the War, what use was made of those old shoots?

A. They were stopped up, filled up. They were no account. Steamboats they build now couldn't get into them. If there wasn't bar water, they would have to lay up. The size boats we have now couldn't get in those old shoots.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further deponent sayeth not.

JAMES H. WRIGHT,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq.:

Q. What is your age, residence and occupation?

A. I was 74 the 1st day of last April; now going on 75; I live at Scary, Putnam County, West Virginia. I have always been a pilot all my life.

Q. On what river? 1129

A. Kanawha, and as far as Louisville on the Ohio River.

Q. When did you first commence the navigation of the Kanawha River?

A. I guess I was about 18 years old when I went on the Kanawha River. I have had license for 50 years, and I was a pilot before I got my license, before the license came out, you know, long before the War.

Q. Before the War there were constructed in the Kanawha River certain shoots. Were you acquainted with those shoots?

A. Yes, sir.

Q. What was their character, as constructed in the river?

A. Well, we had what we call wing dams on each side of the channel. We would cut a lot of brush and put on these dams and put stone on that to back the water up in shallow places.

Q. Were there some shoots constructed with walls?

A. Yes, sir.

Q. What was the channel width of those shoots constructed with walls?

A. I suppose they were something near forty feet.

Q. What use was made of these shoots in the navigation of the Kanawha River?

A. Well, there was very little use made of them. The river was so low you couldn't do much with the shoots—couldn't do anything at all until there was a rise or something of that kind; couldn't do much of anything when the water got under three feet. 1130

Q. Were the shoots constructed straight or crooked?

A. Very crooked, sir.

Q. What effect did this crooked construction have upon the use of the shoots in navigation?

A. Well, we had to—when we salt boated we would have to land at the end of these shoots, and take both crews to run through these shoots, then walk back four or five miles to get the other boat. Four men couldn't handle one boat.

Q. Was there much loss or destruction of cargoes in the navigation of these shoots?

A. Well, I don't know of any. Sunk a heap of salt boats, but we did that when the river would rise. They would sink on the piles. They never sunk any of them right in the channel. That is the way they lost their salt.

Q. What do you mean by saying that they sunk them on the piles?

A. They put bouys on the piles. We had bouys set on those piles. That is the way we had to run. When the river would rise they wouldn't show up. The salt they lost was—well, they knowed where the piles were, too; but they couldn't keep off of them in the current.

Q. Who put in those piles?

A. James River and Kanawha Company.

Q. Were they a part of the system of navigation?

A. They had the river—both sides of the river; that is, the turnpike.

Q. What, in your opinion, as a pilot, was this system of navigation as constructed by the James River Company of benefit to the navigation of the Kanawha River? 1131

A. Well, it wasn't very much. If you will allow me to tell you, I will tell you something. I used to run steamboats here when we would have to put everybody off at the foot of a shoal; and stocked up at New River to get water to drink.

Q. How extensively were those shoots used in the navigation of the Kanawha River?

A. It was very bad.

Q. What improvement was made for navigation purposes in the Kanawha River after the war and before the Government of the United States put in the locks and dams?

A. They straightened the shoots and made them much wider.

Q. Did they not also locate many of them elsewhere in the river?

A. Yes, sir.

Q. Did they not also widen the shoots?

A. Yes, sir.

Q. How extensively were those old shoots user ofter the shoots were so straightened and widened?

A. They weren't used at all, only when there came more water.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause.

Without waiving the exception, counsel for complainant 1132
wishes to ask the following:

By Attorney General Anderson:

Q. Were the new sluices or shoots to which you have referred a benefit to navigation during low water?

A. Yes, sir; they were.

Q. And the river could not have been navigated at all in period of low water but for these sluices?

A. Yes, sir.

Q. It could not have been?

A. No, sir; it could not have been.

Further dependent sayeth not.

JAMES M. PAYNE,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Geo. W. McClintic, Esq.:

Q. State you name, age, residence and occupation.

A. James M. Payne; I am 60 years of age; my residence is Charleston, West Virginia; occupation, lawyer.

Q. Where were you born, Mr. Payne?

A. In Giles County, Virginia.

Q. There has been charged by the Commonwealth of Virginia against West Virginia the sum of $2,400 being 50 per cent. of the amount of money which the Commonwealth of Virginia spent for stock in what is known as the Mountain Lake, Salt Sulphur Springs Turnpike Company, which purported to be a turnpike 1133
from Salt Sulphur Spring, in Monroe County, now West Virginia, by the way of Mountain Lake, in Giles County, now Commonwealth of Virginia, to some point on the Virginia & Tennessee Railroad in the County of Montgomery or Pulaski. Please tell what

you know of that turnpike and how much of it is in the State of West Virginia, and how much in the Commonwealth of Virginia.

A. I know of that pike, turnpike, having been born and reared near it. Part of it ran through my father's home farm, near Newport, in said County of Giles. My father also owned a farm east of Newport along the line of this road. The distance from Salt Sulphur to Mountain Lake is about 24 miles. From Mountain Lake to Christiansburg Depot is about 24 miles. The portion of the turnpike lying in Monroe County between Salt Sulphur Depot and Peters Mountain is about 8 miles. The remaining 40 miles is in Giles County and Montgomery County, Virginia.

No questions; no exceptions.

Further deponent sayeth not.

DR. C. I. LEWIS,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Mr. Mollohan:

Q. State your age, residence and occupation.

A. I will be 73 years old July next. I live at Lewisburg, in Greenbrier County, West Virginia. I practiced medicine for about thirty years, sir. I am doing nothing now.

Q. Where were you raised? 1134

A. I was born at the mouth of Kelly's Creek, in this County. I was raised principally one mile below St. Albans.

Q. Had you spent much time before the war at the falls of the Great Kanawha River?

A. Yes, sir; my father lived there about five years.

Q. Had you any other relatives living there?

A. Yes, sir; my grandfather and grandmother were living there.

Q. Do you know where was located the bridge across Gauley River?

A. Yes, sir.

Q. Where was it?

A. At the mouth of Gauley. The mouth of Gauley is about one mile above Kanawha Falls.

Q. Upon what road or part of what road or turnpike was that bridge constructed?

A. My understanding was the James River and Kanawha.

Q. How long had you known that bridge before the war?

A. I can't remember back—let me see; commence that in 1840. I

went to school there when I was ten years old. Well, I had known it for many years.

Q. Was there any other bridge across Gauley except that one?

A. No, sir; that is the only one I know of.

Q. Was that bridge burned down or destroyed during the War; and, if so, by whom?

A. I belonged to Wise's command. When Wise retreated 1135
out of the valley here, out of this valley, my company stopped at what is now known as the town of Montgomery. We remained there some three or four days. When we went east, and when we arrived at the mouth of Gauley, the bridge was burned.

Q. In what year was that?

A. 1861.

Q. How did you cross Gauley?

A. We forded the river about a quarter of a mile above what is known as the mouth of Scrabble Creek.

Q. What Wise was that?

A. Ex-Governor Wise, General Henry A. Wise.

Q. What was your position in the army at that time?

A. I was Captain of Troop 1, 8th Virginia Cavalry.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further dependent sayeth not.

JOHN SLACK,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq. 1136

Q. State your age, residence and occupation.

A. I will be 75 years old the 1st day of November; residence—I resided in Charleston, West Virginia; I have no particular occupation.

Q. Where did you reside in the year 1861?

A. Here in Charleston.

Q. Were you acquainted with a bridge that had been constructed across Elk River before the War?

A. Yes, sir.

Q. Where was it located?

A. It was located right where the bridge is now. I forget what the name of the street was then, and I really don't know. But it was on the same spot.

Q. On the line of any turnpike?

A. Yes, sir; on the James River and Kanawha Turnpike.

Q. State what occurred to that bridge, if anything, early in the War.

A. Well, when Governor Wise retreated from here in 1861, his soldiers cut the lower strand, that is my recollection, about half, probably not quite half, in two. The bridge didn't fall, and was repaired by the Federal forces when they came up.

Q. What happened to that bridge after that, and when?

A. The next thing that happened to the bridge—they don't say it was the high rise known as the rise of 1861 that damaged it. My recollection is that it did not do any damage. The drift and water raised it way up, and when the water fell the bridge went 1137 back to the normal position.

Q. What happened to it after that?

A. When Lightburn retreated he cut the strand on the lower side of Elk, on the lower side of the bridge, cut it in two, and let the bridge down. Part of it went down in the water.

Q. When was it rebuilt or reconstructed?

A. Well, I cannot fix the date exactly; but it was not reconstructed until there was some legislation which turned it over to Mr. Joseph Biddle. I don't remember now whether that was by the legislation called the restored Government, or whether it was after the State was made; but I think it was after the State was made. I think it was after the 20th of June, 1863.

Q. From the time Lightburn cut its cables, until it was rebuilt, what was its condition? Was it used for any purpose?

A. None at all. The wires at this end of the bridge held it up; that is, this end of the bridge, but the other end was down. The lower side was in the water.

Q. Do you know anything about the destruction of the bridge at Sissonville?

A. I don't know anything about that.

Q. Do you know what became of the bridge at Sissonville, Kanawha County, West Virginia, over the Pocatalico River?

A. My recollection is that it was down for some time, but when it went down or what made it go down I don't know. 1138

Q. Weren't you sheriff of the county?

A. Yes, sir.

Q. Were you sheriff under the restored government?

A. No, sir; I was elected under the old State Government just as the War was breaking out.

Q. Do you know that it was done before the 20th day of June, 1863?

A. I can't be positive about that.

Q. On what road was that bridge?

A. It was on the road that was called the Kanawha & Jackson Turnpike—The Charleston, Ripley and Ravenswood, built by Henry Chapel.

Q. Were you much through this section of the country before June 20th, 1863?

A. Yes, sir; I was around considerable through this end of the State.

Q. Were you anywhere outside of the County of Kanawha?

A. Yes, sir; I was in Cabell County, Roane County, Jackson County, Mason County.

Q. Were you in Putnam County?

A. Yes, sir; Putnam, and what is now Lincoln, Braxton County, Clay County. I can't remember all of them now.

Q. Were you acquainted with the Kanawha & James River Turnpike, located through Kanawha County and adjoining counties?

A. Yes, sir; I was. 1139

Q. What was the condition of this turnpike in the years 1861 and 62 and up to June 20, 1863?

A. Well, in the winter season they were almost impassable, particularly where the Army had travelled.

Q. How did the Army injure this pikes?

A. Well, the travel over them in the winter time destroyed them, cut them up and made them almost impassable.

Q. What effect did the wagons used by the army have upon these pikes?

A. Cut ditches and holes in the roads; had to fill some of the holes up with stone. The James River and Kanawha Turnpike was one of the streets right through the town here. In the winter time they were almost impassable at times. The army would repair it occasionally by putting rock in the mud holes.

Q. What repairs, if any, were made upon these pikes by any public authority in the years 1861 and 62 and up to June 20, 1863?

A. None, I don't think. There were no good roads through this country during the War.

Q. Did you, during that time, make any trip or trips over the James River and Kanawha Turnpike between Point Pleasant and Charleston?

A. Oh, yes.

Q. What was the condition of that part of the Pike?

A. Oh, I stated before, in the winter time it was very bad. Dry weather, of course, helped the roads.

Q. Were you over any part of the James River & Kanawha Turnpike between there and Kanawha Falls during that time? 1140

A. Yes, sir.

Q. What was the condition of that part of the turnpike?

A. Well, it was bad.

Q. When you say "bad," what do you mean?

A. I mean it was all cut to pieces, particularly in the winter time, and it was almost impassable to get along, even on horseback.

Q. Was there much hauling over that part of the turnpike in connection with the army?

A. Yes, sir; there was a great deal. That is principally what caused the condition of it.

Q. Were you over any part of the Charleston, Ripley and Ravenswood Turnpike during any part of that time?

A. Yes, sir.

Q. What was its condition?

A. The same as the others; in the winter time very bad.

Q. Do you remember what was known as the high rise in the Kanawha River in 1861?

A. Yes, sir; I remember that very well.

Q. Where were you at the time?

A. Here in Charleston.

Q. What effect did that rise have upon the turnpike or the bridges located thereon?

A. Well, it carried out a great many of the bridges. The bridges in the small streams between here and Lewisburg were nearly all destroyed in September, 1861. The bridges from here to 1141
Point Pleasant, my recollection is that they were nearly all taken out. I know some of them were. As I understand, some of them were rebuilt soon. That was in Mason County, and I don't know how that is.

Q. Do you know how far the Charleston, Ripley & Ravenswood Turnpike had been made before the war?

A. Well, it was a pretty good road from here to Sissonsville before the War.

Q. How far had it been made?

A. Well, it was all made before the War. I don't know anything about it about two miles beyond Sissonsville. I think Chapel quit there. It was finished to Fishers. About two miles above Sissonsville, about twenty miles from here.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the case.

Further deponent sayeth not.

WILLIAM H. TOMPKINS,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq.: 1142

Q. State your age, residence and occupation.

A. I am 72 years of age; I reside in Charleston, Kanawha County, West Virginia; I have no occupation at present.

Q. Where did you reside in 1861?

A. I was born in Kanawha County and I reside in Kanawha County, and have always lived here. In 1861 I resided in Cedar Grove, Kelley's Creek, 20 miles above here.

Q. On what road?

A. On the old James River and Kanawha turnpike.

Q. How long did you reside there during the Civil War?

A. Until October, 1862.

Q. Where did you go then?

A. I went to Virginia and joined the army.

Q. When you left this country, which way did you go?

A. I went to Lewisburg first, and from there to Dublin depot.

Q. When you went South, what turnpike, if any, did you travel over?

A. Over the James River and Kanawha turnpike to Lewisburg.

Q. What was the condition of that turnpike when you travelled over it? I mean on that trip?

A. Well, it was no good, sir. I would call it bad.

Q. In what respect?

A. Well, the roads were a good deal cut up and the bridges were gone, especially the bridge across Gauley. We ferried 1143
there.

Q. What, in your opinion, had cut the road up, as you saw it?

A. So far as the army went, that was the cause of it, especially to Gauley Bridge. That was in bad condition. The supplies were hauled during the first year of the War from Ten mile house, ten miles above here.

Q. How far was it from Charleston to Gauley Bridge?

A. We always called it 39 miles.

Q. What temporary devices were resorted to by the army to make the roads passable?

A. They would throw rocks in the road, put timber in it. Sometimes it was kind of a corduroy road. They would put anything in it that they could get to fill up the ruts. There were hundreds of wagons passing over it.

Q. What did they corduroy it with?

A. Anything they could get, rails or anything else. I don't mean all the way; but in some places. They put rocks in the ruts that were cut where they could get them.

Q. Were there not very large armies in the early part of the War between Gauley Bridge and Lewisburg?

A. Well, I can't say that they were very large armies. There were troops at times between Lewisburg and Gauley and the top of Gauley Mountain. Of course, they made raids from there frequently.

Q. In the early part of the war wasn't a large Confederate army in that section under General Lee, and also a large Federal army under the command of General Rosecrans? 1144

A. Yes, sir; stations there on the Sewell. That was in 1861.

Q. From what point did the army of General Roscrans get its supplies?

A. Well, I suppose they got most of them passing Gauley from the head of navigation on the Kanawha.

Q. How would General Lee be compelled to get his supplies?

A. He would have to haul them over the road from the other end, from Lewisburg.

Q. Over what turnpike would these supplies have to be hauled?

A. James River & Kanawha turnpike.

Q. Had you occasion during that time to travel over any other turnpikes in this end of the State, and, if so, what?

A. No, sir; I didn't. I stayed right close at home.

Q. When you returned from the War, at the end of the War, over what road or roads did you come?

A. I came by the way of Lewisburg; and from Lewisburg I came over the James River and Kanawha Turnpike, in June, 1865.

Q. What was the condition of the pike at that time?

A. Well, it was bad?

Q. Had any repairs apparently been made to the road?

A. I don't think there had, sir.

Q. What do you remember about the fact that the small bridges on the road had been destroyed and remained unreplaced?

A. My recollection is that when I returned a number of them 1145
were not there. We had to come around where the bridges were. There had been temporary roads built around. There wasn't any bridges of any particular size that were formerly there but were gone. The roads were in very bad condition.

Q. What connection, if any, had you with the navigation of the Kanawha River?

A. When?

Q. Previous to the War; previous to the Civil War?

A. I didn't have any particular connection before the War; I was up and down the river frequently, but I had no position on the river.

Q. After the War what had you?

A. Well, after the War I steamboated a long time on the Kanawha River and down the Ohio to Cincinnati. I was a member of the Kanawha River Board for three years or more. As a salt manufacturer I used to ship salt down the river in flat boats.

Q. Do you remember, generally, the old shoots that had been constructed in the Kanawha River before the War?

A. Oh, yes; I remember a great many of them—most of them, I suppose.

Q. What were their character? That is, as a means of navigation?

A. Well, sir, they were—they served very little if any. They were narrow and swift, badly located; navigation was very dangerous, that is, by flat boats—and even for steamboats.

Q. Were they straight or crooked? 1146

A. Well, they weren't always straight; they were narrow. The boats of the present day couldn't run through at all. Such boats as I ran couldn't get in those shoots at all.

Q. In passing up and down the river before the war with steamboats, how extensively were those shoots used?

A. They weren't used at all times. Sometimes in ascending it was impossible to ascend them. You would have to wind a boat clear through. It would have been better, in fact, to stay in the current. Another thing, I didn't think it was possible for steamboats to ascend them by winding.

Q. Didn't steamboats in coming up through the Elk shoot usually pass around to the left of the shoot?

A. Yes, sir; left, in ascending it. They would come close to this shore until they came up to the mouth of the Elk.

Q. Do you remember the shoot through Johnson's shoal?

A. That was pretty bad and crooked before it was repaired and rebuilt.

Q. What was the trouble with it?

A. Well, it was crooked and narrow; it didn't afford sufficient water for easy navigation.

Q. Do you remember the character of the shoot Knobs Shoals?

A. Yes, sir. It went down through that old shoot in the middle of the river. The old shoot was in the middle of the river, and it was narrow. 1147

Q. How was it located for the purpose of navigation?

A. Well, it was badly located, and very difficult to run. Afterwards a new shoot was made through there.

Q. Do you remember the improvement in Catfish Shoals above Charleston?

A. Catfish Shoals was a very bad place; but before the War very little steamboating, very little of anything, in fact, was done there. Very little coal and very little salt shipped before the War. But it was a very bad place.

Q. How was that improvement located for the purposes of navigation?

A. Well, they were bad, they were all bad.

Q. Was that so with the shoot from Tackett?

A. Yes, sir.

Q. There was an improvement lower down called Dovey's Dam. Do you remember that?

A. Yes, sir; that was way down.

Q. How was that constructed for the purposes of navigation?

A. Well, that was a badly constructed and very dangerous place; that is, dangerous for navigation. It was a common thing to sink salt boats at any of these shoots.

Q. How was the shoot constructed at 13?

A. Well, before the improvement that was a bad place.

Q. How was that for the purposes of navigation?

A. Bad.

Q. Was there any loss to navigation on account of that shoot?

A. Oh, yes; there has been.

Q. For the purposes of navigation, generally, of the Kana- 1148
wha River, what is your opinion of the shoots constructed in the river before War?

A. Well, I consider them of little or no value for navigation. We generally ran things out of here on a tide or rise. They could have done just as well without the improvement as with it. They would hold salt boats here until they accumulated, fifty or one hundred, maybe, and run them out on a rise.

Q. On such occasions, what use was made of those shoots?

A. None, during the rise. They went over the bars—what we call bar water.

Q. What was the character of steamboats, generally, that navigated the river before 1861?

A. They were small, generally, in comparison with the boats of the present day.

Q. What improvements were made in the navigation of the Kanawha River after the war and before the Government of the United States put in the lock and dam system?

A. Naturally, the river was almost entirely remodeled. A new shoot was made at Elk, one at Johnson, one at Knob, and at 13; besides other places. Tackett, for instance, there was an improvement and at Red House. That was a bad place.

Q. Before the War?

A. Yes, sir; that was very bad. That shoot was narrow and 1149
long. I almost overlooked the Red House shoot.

Q. In these improvements made after the War, were the locations of the old shoots largely abandoned?

A. Oh, yes. They were relocated in a great many instances, and in one or two instances they were simply widened, they simply widened the shoot or straightened it, as in the case of Elk here. Tackett, Johnson, Knob, Red House and Thirteen, you might say they were almost entirely relocated. Elk was widened and deepened and strengthened.

Counsel for the complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving that exception, counsel for complainant asks the following questions:

Q. What was the principal line of communication between the

Kanawha Valley and the eastern part of Virginia? I mean, for many years prior to the War?

A. Principally by the James River and Kanawha Turnpike.

Q. What was the principal line of communication between Charleston and the Kanawha and Ravenswood on the Ohio, during the same period prior to the War?

A. There were two ways of reaching Ravenswood: By the Charleston, Ripley and Ravenswood Turnpike, or you could go down the Kanawha River and up the Ohio. Ravenswood is right on the Ohio River.

Q. The principal line of communication, if any one went 1150
over-land, was by the Charleston, Ripley and Ravenswood Pike, wasn't it?

A. That was the principal way; yes, sir.

Re-Direct Examination.

By Wesley Mollohan, Esq.:

Q. Do you know how far the Charleston, Ripley and Ravenswood Turnpike had been made before the War?

A. No, sir; I don't. I never knew much about that country. Mr. Slack could tell you more about that than I could.

Further deponent sayeth not.

CHARLES W. DERING,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by George W. McClintic, Esq.:

Q. Give your age, residence and occupation?

A. Forty-four; residence, Charleston, West Virginia; occupation, Chief Clerk in the State Auditor's office.

Q. How long have you occupied the position of Chief Clerk in the State Auditor's office?

A. Since March 4th, last.

Q. State, Mr. Dering, if you have examined the books of the Auditor's office as to the First National Bank of Fairmont; and if so, state what shares of stock, if any, the State of West Virginia received from the first National Bank of Fairmont for the shares of stock held by the State in the Bank of Fairmont?

A. Yes, sir; I have examined the records of the Board of 1151
School Fund, and find that the State got 500 shares, of $100 a share, as I am informed.

Q. State if you have examined the books in the Auditor's office and what shares of stock were received by the State of West Virginia

from the Northwestern Bank of Virginia at Wheeling and its branches, and the par value thereof.

A. I have examined the records, the same book, and find that the State received from the National Bank of West Virginia from the Northwestern Bank of Virginia at Wheeling 300 shares, and from the First National Bank of Wellsburg 351 shares, and from the Parkersburg National Bank 400 shares, of $100 a share.

Q. State if the records show that the bank at Parkersburg and the Bank at Wellsburg were originally branches of the Northwestern Bank of Virginia at Wheeling, after the National Banks above spoken of had been formed.

A. The records do not show.

Q. Did the State receive any money or other thing of value besides the stock?

A. Yes, sir. I find in the same record two payments or dividends of 5 per cent., amounting to $10,510 each dividend; same record.

Q. State if you found whether or not the State received anything else, so far as the records show, from these two banks than the stocks and moneys above set out?

A. Nothing that I discovered. They do not show any other 1152 payments or any other stocks.

Counsel for the complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving the exception, counsel for the complainant asked the following questions:

Q. Do you know what the State of West Virginia did not receive any other money or property or thing of value on account of shares of stock formerly owned by the Commonwealth of Virginia in the Northwestern Bank of Virginia at Wheeling and its branches and any other banks located within the limits of what is now West Virginia, in addition to the shares of stock and money you have mentioned?

A. No, sir; I do not know that West Virginia did not receive anything besides this stock; but I find nothing in the records, so far as I have been over them, except what I stated.

Q. That is all.

Further the witness saith not.

The taking of these depositions is resumed this 21st day of May, 1909, at the hour of 10:00 o'clock A. M., at the same place.

Present on behalf of the defendant, the State of West Vir- 1153
ginia: Wesley Mollohan and George W. McClintic, of counsel.

Present on behalf of the complainant, the Commonwealth of Virginia, William A. Anderson, Attorney General of Virginia.

J. K. THOMPSON,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by George W. McClintic, Esq.:

Q. Give your name, age, residence and occupation.

A. J. K. Thompson; 66 years old; occupation, farmer, I reckon—as much that as anything else; Winfield, West Virginia, Route No. 1, Putnam County.

Q. What were you doing when the War began in 1861?

A. I was a cadet of the Virginia Military Institute.

Q. If you joined the army, which one and where?

A. When the War broke out, we were ordered to Richmond. I served there as cadet and drill master for a couple of months drilling the Virginia troops that were mobilized there. Some time during the summer I was transferred to this Western Virginia Department. I came here to Charleston, and on Wise's retreat we fell back to White Sulphur Springs. There I organized the 22d regiment. They put 10 companies into that regiment. I served as adjutant until 10th of October, 1861. I resigned that and accepted the first lieutenancy in Company A, 22d Virginia regiment. I served in that company and regiment for the rest of the War.

Q. What parts or counties of what is now West Virginia were you mostly in during the period from 1861 to 1863, inclusive?

A. 1861 to 1863? Putnam, Kanawha, Fayette, Raleigh, 1154
Mercer, Monroe, Greenbrier, and Nicholas Counties, and I made one expedition into Randolph, Upshur, Lewis, Braxton and Pocahontas. I was in Pocahontas County frequently during the War. I had a fight or two in there.

Q. What was the condition of the various roads in those counties during the war, as you saw them, in a general way?

A. The roads, it is my recollection—well, I came across from Richmond over the Virginia Central to the Jackson River depot, and from there to Charleston over the James River and Kanawha Pike, and then I tramped that road several times from White Sulphur Springs back and forth. The roads were in pretty fair condition until the armies passed over them. They cut them up. Then they got into very bad condition and remained in that condition until the end of the war; and they were kept up, that is, what keeping was done to them, by the pioneer corps of the Army in what is now West Virginia. The roads from our base of supplies, Doublin Depot and Jackson

River depot, were kept up by the pioneer corps of the Army. They had to keep a force of men on the roads all the time, fixing them up, so that we could get over them with the wagons. Of course, one's recollection is not very vivid after this lapse of time. But we were always in trouble with our wagons and artillery trains moving over these roads.

Q. Tell what you know of the James River and Kanawha turnpikes as to bridges in the West Virginia counties, telling if you know, of any bridges that were burned. 1155

A. Commencing with the Poca bridge—that was burned in 1861, on the James River and Kanawha pike; then, I believe, the bridge over Gauley was burned. I do not remember whether it was burned in 1861 or 1862. I know it was burned, though. The bridge across Greenbrier—the bridge three miles on the other side of Lewisburg—that was burned about the time I got my eye shot out, I think. That was in 1862, I believe. That is my recollection. I swear to anything, hardly as to specific times.

Q. How were the creek bridges on this road, if you recollect, were they left or gone?

A. Well, some of them were left. A great many of them were washed out in the fall of 1861—that big rain that produced the highest the flood we have ever had in the Kanawha River.

Q. How was the year 1861 as to rain?

A. It was very wet, the autumn of 1861, all over the mountains up here. When we retreated from Cotton Hill, over the Kanawha, Fayette and Giles Pike, the roads became impassable for Army wagons. A great many were abandoned on account of the roads, just stick in the mud, cut the teams loose and go on. I saw abandoned wagons, I know, as we went along, abandoned by those who went head of us, of course.

Q. State what you remember of the condition of the roads.

A. Where?

Q. In Randolph, Upshur, Lewis, Braxton and Nicholas, as 1156 you saw them on the expedition of April, 1863.

A. Well, they were in very rough condition. They had been cut up by the two armies in the fall of 1861, up there, and I suppose they had never been repaired afterwards. They very much obstructed us on that light Imboden raid. But we didn't have much to haul then.

Q. When you spoke of joining the army a while ago, you joined what was called the Confederate Army?

A. Yes, sir. I believe we didn't join the Confederate army proper until May, 1862.

Q. What official positions have you held under the State of West Virginia or the United States since the War?

A. Well, I have served a term in the legislature, member of the County Court for twelve years. I believe I was a member of the famous Kanawha Board, that wound up the affairs of the old James

River and Kanawha corporation. I was a member of the West Virginia tax commission that drafted these tax laws.

Q. What position under the United States?

A. United States Marshal for eight years and a half, I believe.

Counsel for the complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving that exception, counsel for the complainant, the Commonwealth of Virginia, asked the following questions: 1157

Q. Was there any extraordinary rain fall in western Virginia in the year 1861?

A. In the fall of the year 1861 there was; yes, sir. It was an extraordinary rain fall. It came on about the time of the autumnal equinox.

Q. Did the wet weather continue for a long time during the fall of 1861 in the mountains of West Virginia?

A. Yes, sir; it continued.

Q. Wasn't it frequent?

A. Yes, sir; it was very wet. I think we went back to Cotton Hill late in November. I don't remember much about it after I got to Raleigh, because I was stricken down with camp fever.

Q. Were not all the turnpikes and roads in the counties of West Virginia referred to by you in your examination in chief dirt roads and turnpikes?

A. Yes, sir.

Q. Not macadamized?

A. No, sir.

Q. They would be liable, then, would they not, to become very muddy in long seasons of wet weather whether Army wagons went over them or not?

A. Well, they would become muddy if used by any kind of wagons. They would be cut up. Of course, if they were not used they wouldn't become cut up.

Q. They wouldn't be cut into holes unless they were used? That is, cut into holes and ruts?

A. You couldn't use them without their becoming muddy. 1158 Of course, in rainy weather they would become wet, but muddy only when they were used. The wet weather would only make them so that they would be cut up if they were used much.

Q. The Kanawha Road was used a great deal, was it not, before the War and in time of peace?

A. Well, that I cannot speak of it to my own knowledge. I was only over it once before the war when I was a child. I came out here

in 1850. I never travelled it again until war broke out. I travelled by rail when I went east; that is, from Charleston.

Q. That was the principal line of communication between the Kanawha Valley and eastern Virginia for many years before the war, was it not?

A. Well, I do not know that I can answer that question from my own knowledge. You see, when the war broke out I was only eighteen years old. I went to Lexington when I was sixteen. I have very little recollection of events prior to the war. I lived in the country.

Q. Wasn't the James River and Kanawha Road the main thoroughfare along the Kanawha Valley and from the Kanawha Valley to Covington after the close of the war until the construction of the C. & O. Railroad?

A. Yes, sir, it was.

Q. Can you state what its condition was after the war?

A. No, sir; I was never over it after the close of the war, except when I went from here to Gauley to go hunting up in the mountains. I believe I never since travelled over the James River and Kanawha Pike except from here to Gauley. That was in 1878, 1159
in the fall of 1878. I came over that road in 1865 from Lewisburg, and it was in bad condition then.

Q. Didn't stages and other vehicles go over it regularly—wasn't there a regular stage from here to Lewisburg after the close of the War?

A. Indeed, I do not know.

Further deponent saith not.

THOMAS SWINBURN,

a witness of lawful age, being first duly sworn, deposed and says.

Examined by George W. McClintic, Esq.:

Q. State, Mr. Swinburn, your age, residence and occupation.

A. I am 69 years of age; I reside in the City of Charleston; I scarcely have any occupation now.

Q. State if you were a member of any army in the year 1861 or during the war of 1861 to 1865; and, if so, what army and what regiment of what army?

A. I was a member of the 7th West Virginia Cavalry.

Q. When did you join the 7th West Virginia Cavalry, if you remember?

A. In fall of 1861. I may state that it was the 8th infantry when I joined it, and it was afterwards converted into the 7th Cavalry.

Q. What counties in what is now West Virginia did you campaign in or be in from 1861 to 1863, so far as you now remem- 1160
ber?

A. First in Kanawha County, a while in Putnam County; from there we went to New Creek, Hampshire County, on the B. & O.; from there we went to Franklin in Pendleton County; then back to Moorfield, Hardy County, and Wardensville in the same county. We passed through Romney on the way to Wardensville, and from there we went to Lost River Bridge in Hardy County.

Q. Were you in Harrison and Randolph counties?

A. Yes, sir.

Q. Upshur, Lewis?

A. Yes, sir.

Q. Braxton?

A. I think, perhaps, I was; yes, I was.

Q. State, Mr. Swinburn, the condition of the roads in these various counties as you saw them from the year 1861 to 1863?

A. They were all dirt roads. I never saw a macadamized road in West Virginia.

Q. What was their condition as to goodness of repair?

A. Well, in the summer time they were generally a string of dust and in the winter time a string of mud. Dirt roads necessarily will be.

Q. Had the army travel cut them up much?

A. Yes, sir; in soft weather it necessarily would. In bad weather they would become almost impassable. A great many mule teams were hauling supplies.

Q. Do you remember the year 1861 as to whether it was a wet 1161
year or not?

A. My recollection is that it wasn't a very wet year here. It was dry until the big flood came.

Q. The flood was the biggest one they had here for some time?

A. The highest flood here that ever was known.

Q. That would affect the small tributaries of the Kanawha River, or would it not?

A. It did to some extent. There wasn't a great deal in that day to be affected.

Counsel for complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further the witness saith not.

AGREEMENT.

It is agreed by the parties hereto that the signatures of the witnesses to these depositions are hereby waived. And it is further agreed that counsel for the complainant could except to any of the testimony at

the close of the deposition of any witness, and that the exception would be of the same effect as if made to each and every question and answer separately at the propounding and making of the same.

STATE OF WEST VIRGINIA, 1162

County of Kanawha, to-wit:

I, J. E. Campbell, a notary in and for the county of Kanawha and State of West Virginia, do hereby certify that the foregoing depositions of Peter E. Love, Frederick Lee Baumgardner, B. F. Swann, William A. Griffith, W. F. Gregory, James H. Wright, Henry V. Sattes, Dr. C. I. Lewis, John Slack, William H. Thompson, Charles W. Dering, J. K. Thompson, and Thomas Swinburn, were taken at the times and places therein set out; and I further certify that each of said witnesses was duly sworn.

Given under my hand and official seal this the 21st day of May, 1909.

(Seal) J. E. CAMPBELL,

Notary Public in and for the County of Kanawha and State of West Virginia.

PLAINTIFF'S GENERAL EXHIBIT 1.

ABSTRACT OF ACTS

OF THE

GENERAL ASSEMBLY OF VIRGINIA

1820 TO 1860 INCLUSIVE.

RELATING TO THE

VIRGINIA STATE DEBT.

Within is an abstract of the Acts of the General Assembly of Virginia, from 1820 to 1860, inclusive,—being acts authorizing subscriptions and appropriations to works of internal improvement, banks, etc., and such other acts, of a general nature, as bear upon the creation, evolution, and administration of the public debt of the State, up to 1861.

It is believed that this list will afford explanations for numerous transactions connected with the matter of this public debt, and will constitute a convenient reference to many authorities needful in the preparation of a statement of the account between the States of Virginia and West Virginia.

The acts are collated into the following divisions:

1. Incorporated turnpike and road companies to the capital stock of which the State subscribed.
2. Roads constructed wholly or partly on State account.
3. Navigation companies, Canals, etc.
4. Railroads.
5. James River Co. and James River & Kanawha Co.
6. Bridges.
7. Banks.
8. Miscellaneous appropriations.
9. Miscellaneous: of a general nature.

EXPLANATORY.

The figures in the left-hand margin indicate the date of the passage of the act and the page of the Acts on which it is to be found. The figures in the right-hand margin show the amounts authorized to be subscribed or appropriated. "B. P. W." means Board of Public Works, under whose direction practically all the works of internal improvement to which the State contributed were conducted. "Incptd." following the name of a company means that the company was incorporated by that act.

Thus:

3/28/51-100 Jefferson & Frederick Tpke Co. Incptd. $10,000. and B. P. W. for 3/5 6,000

The above notation means that by act of March 28th, 1851, page 100 of the Acts of 1850-51, the Jefferson & Frederick Tpke Co. was incorporated, with a capital of $10,000, and that the Board of Public Works was directed to subscribe on behalf of the State for 3/5 of the capital stock, or $6,000.

The within list, being a tabulation of Acts of Assembly, concerns only authorities, and not actual expenditures or transactions; but with the aid of the excellent maps and charts to be found in the office of the Virginia State Corporation Commission, and the annual reports (published in bound volumes) of the Board of Public Works, also to be found in that office and in the State Library, the routes of the various improvements, and the amounts actually expended on them, may be accurately ascertained.

JOS. C. TAYLOR.

May 14/08.

TURNPIKES.

2/10/20- 62 Ashby's Gap Tpke Co. B. P. W. to subscribe for 140 shares of—(Act 1/30/1810-78 shows par val to be $100.) $14,000
(From Little River Tpke Road to Shenandoah River through Ashby's Gap of Blue Ridge.)

2/ 7/25- 63 B. P. W. to subscribe for additional 140 shares. 14,000

2/19/35-131 Augusta Springs Tpke Co., Incptd., $6,000, and B. P. W. for 2/5 2,400
(In Augusta County.)

3/29/60-302 Back Creek Valley Tpke Co. B. P. W. for 3/5 of $2,500 1,500
(From a point on N. W. Tpke in Frederick Co. up Back Creek Valley to Capon Springs in Hampshire Co.)

3/ 9/53-199 Bellville & Williamsport Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Bellville in Wood Co. to Williamsp't in same Co.)

3/ 1/51-103 Berkeley & Hampshire Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Martinsburg in Berkeley Co. to point on N. W. Tpke in Hampshire Co.)

3/22/53-205 Amends above act and increases capital to $36,000, and B. P. W. for 3/5 9,600

3/16/49-123 Berkeley & Jefferson Tpke Co., Incptd., $20,000, and B. P. W. for 2/5..... 8,000
(From Martinsburg in Berkeley Co. to Shepherdstown and Smithfield Road in Jefferson Co.)

3/19/31-210 Berryville Tpke Co. B. P. W. for 126 shares of ($10,000 par val. $50.) 6,300
(From Berryville in Frederick Co. to Snicker's Ferry on Shenandoah River.)

3/30/39- 91 Capital increased by $15,000, and B. P. W. for 2/5 6,000

2/ 4/47-117 Capital increased by $5,000, and B. P. W. 2/5. 2,000

3/22/47-117 Berryville and Charlestown Tpke Co., Incptd., $23,000, and B. P. W. for 2/5.
(From Berryville then in Clarke Co. to Charlestown in Jefferson Co.)

3/12/49-120 Further time allowed to begin; changes B. P. W.'s subscription to 3/5 instead of the 2/5 above 13,800

3/18/50- 84	Capital increased by $12,000, and B. P. W. for 3/5	7,200
4/ 2/58- 95	State appropriation to pay for—account of purchase of—by B. P. W. at a sale thereof	7,150
3/13/47-124	Beverly & Phillipi Tpke Co., Ineptd., $9,000, and B. P. W. for 2/5 ..... (From Beverly in Randolph Co. to Phil. in Barbour Co.)	3,600
2/15/60-291	Blacksburg, Catawba Creek & Fincastle Tpke Co., Ineptd., $16,000, B. P. W. for 3/5..... (From Blacksburg in Montgomery Co. by Catawba Cr. in Roanoke Co. to Fincastle in Botetourt Co.)	9,600
3/26/53-209	Blacksville & Worthington Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5 ..... (From Blacksville in Monongalia Co. to Worthington in Marion Co.)	9,000
3/31/51-113	Black Water Tpke Co., Ineptd., $1,800, B. P. W. 3/5 ..... (Across Alleghany Mountains in Franklin and Floyd Counties.) This act repeals Act of 3/11/50-91 appropriating $600 for a road across Alleghany Mts.	1,080
3/25/48-206	Blue Ridge Co., Ineptd., $200,000, and B. P. W. for 2/5. (From New Market in Shenandoah Co. to Gordonsville in Orange Co.)	
3/17/49-118	Capital reduced to $120,000, and B. P. W. for 3/5	72,000
3/ 3/51- 96	Capital increased by $50,000 and B. P. W. for 3/5	30,000
2/11/53- 76	Transfers to—the $1,500 appropriated to a road from Eastern base of Blue Ridge in Madison Co. to Western base in Page Co. by Acts 3/15/49- 93.	1,500

3/19/50- 76 Boydton & Petersburg Plank Road Co., Incptd., $160,000, and B. P. W. for 3/5 96,000
(From Boydton in Mecklenburg Co. to Petersburg in Dinwiddie Co.)

3/16/53-178 Capital increased by $20,000, and B. P. W. 3/5. 12,000

3/ 1/53-194 Brown's Gap Tpke Co., Incptd., $18,000, B. P. W. for 3/5 10,800
(From point in Rockingham Co. to point in Albemarle Co.)

3/ 4/53-176 Brunswick & Roanoke Plank Co., Incptd., $70,000, and B. P. W. for 3/5 42,000
(Brunswick and Roanoke Counties)

3/15/56-123 Provides that $6,000 of above appropriation shall go to Dinwiddie Plank Road Co., provided stockholders of Brunswick & Roanoke Pl. R'd Co. consent. See Dinwiddie Plank Road Co.

3/15/49-110 Buchanan Tpke Co., Incptd., $9,000, B. P. W. for 3/5 5,400
(From Dibbrell's Springs to Buchanan in Botetourt Co.)

3/11/50-102 Capital increased by $6,000, and B. P. W. for 3/5 3,600

2/ 9/50- 90 Buchanan & Bedford Tpke Co., Incptd., $10,000 and B. P. W. for 3/5 6,000
(In Botetourt Co.)

3/15/49-131 Buckhannon & Little Kanawha Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From Buckhannon in Lewis Co. to point in Braxton Co.)

3/18/53- 75 Revises act next above.

3/28/51- 83 Buford's Gap & Buchanan Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Buford's depot on Va. & Tenn. R. R. to Buchanan in Botetourt Co.)

4/ 3/38-134 Cacapon & North Branch Tpke Co., Incptd., $30,000, and B. P. W. for 2/5 12,000
(From Cac. in Hampshire Co. to point on N. Branch of Potomac Riv. near Cumberland.)

3/20/47-119 Capital increased by $2,500, and B. P. W. for 2/5 1,000

3/29/53-213 Carroll & Pulaski Tpke Co., Incptd., $9,000, and B. P. W. for 3/5 5,400
(From point in Pulaski Co. to point on Jacksonville and Hillsville Tpke.)

2/10/53-189 Cassville & Chapmansville Tpke Co., Incptd., $10,000, B. P. W. for 3/5..... 6,000
(From Cassville in Wayne Co. to Ch. in Logan Co.)

3/30/53-216 Castleman's Ferry Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From C.'s Ferry in Clarke Co. to Berryville & Charlestown Tpke.)

3/24/51-101 Cedar Creek & Opequon Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From a point on Cedar Creek to a point on Valley Tpke in Frederick Co.)

1/31/54- 54 Capital increased by $3,000, and B. P. W. for 3/5 1,800

3/17/51-123 Centreville & St. Mary's Tpke Co., Incptd., $8,400, and B. P. W. for 3/5 5,040
(From Tyler Co. to Wood Co.)

1/23/35-133 Charleston & Point Pleasant Tpke Co., Incptd., $40,000, and B. P. W. for 2/5 16,000
(From Charleston in Kanawha Co. to Point Pleasant in Mason Co.)

1/25/39- 87 Capital increased by $12,000, and B. P. W. for 2/5 4,800

4/ 1/48-223 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/15/49-134	B. P. W. to subscribe for additional $8,000...	8,000
3/15/51-113	B. P. W. to subscribe for additional $2,460...	2,460
3/28/48-221	Charleston, Ripley & Parkersburg Tpke Co., Ineptd., $40,000, and B. P. W. for 3/5 ..... (From Charleston in Kanawha Co. to Parkersburg in Wood Co.)	24,000
3/25/53-211	Amends above act and changes name of Co. to Charleston, Ripley & Ravenswood Tpke Co. See Charleston, Ripley & Ravenwood Tpke Co.	
3/25/53-211	Charleston, Ripley & Ravenswood Tpke., Ineptd. Name of Charleston, Ripley & Parkersburg Tpke Co. changed to this. Capital $40,000, with privilege of increase by $10,000, for branch to Parkersburg, and B. P. W. for 3/5 of this $50,000 ..... (From Charleston in Kanawha Co. through Ripley in Jackson Co. to Ravenswood in Jackson Co.)	30,000
3/ 9/60-292	Capital increased by $10,000, and B. P. W. for 3/5	6,000
2/21/53-173	Christiansville & Keysville Plank Road Co., Ineptd., $30,000, and B. P. W. for 3/5 ..... (From Ch. in Mecklenburg Co. to Keysv. in Charlotte Co.)	18,000
4/ 1/53-222	Clarke & Warren Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5 ..... (From Clarke Co. to Warren Co.)	18,000
3/ 9/48-219	Clarksburg & Buchanan Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5 ..... (From Clarksb'g in Harrison Co. to Buc. in Lewis Co.)	9,000
3/ 5/51-118	Capital increased by $5,000, and B. P. W. for 3/5 ..... (The name is spelt "Buckhannon" in this act. This is the proper spelling of this town's name.)	3,000

3/18/53-70	B. P. W. to borrow and spend on this road the further sum of $20,000	20,000
3/13/49-129	Clarksburg & Phillipi Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5 ..... (From Phillipi in Barbour Co. to Clksbg in Harrison Co.)	6,000
3/30/39- 92	Clarksburg & Wheeling Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5 ..... (From Clksbg in Harrison Co. in the direction of Wheeling to connect with Middletown & Wheeling Tpke.)	6,000
2/ 2/50- 60	Clarksburg & Wheeling Tpke Co., Ineptd., $7,000, and B. P. W., for 3/5 ..... (From Shinston in Harrison Co. towards Wheeling.)	4,200
3/27/60-286	Capital increased by $10,000, and B. P. W. for 3/5	6,000
3/27/58- 99	Clear Fork Road Co., Ineptd., $3,000, with privilege of increasing to $5,000, and B. P. W. for 3/5 (From Point in Raleigh Co. to point in same Co.)	3,000
2/ 9/39- 81	Cox Lane Tpke Co., Ineptd., $12,000, and B. P. W. for 2/5 ..... (From point in Lunenburg Co. to point in Nottoway Co.)	4,800
2/10/53-190	Cranberry Summit & Brandonville Tpke Co., Ineptd., $8,025, and B. P. W. for 3/5 ..... (From Cranberry Sum. in Preston Co. to Br. in same Co.)	4,815
3/31/53-220	Cross Roads & Summit Point Tpke Co., amends incorporating act. Capital $10,000, B. P. W. 3/5 (From point of intersection of Charlestown & Berryville Tpke at Cross Road leading to Summit Point to Sum. Pt. depot in Jefferson Co.)	6,000
2/28/33- 95	Danville & Evansham Tpke Co. Capital reduced to $50,000, but allowed to be increased to $100,000, and B. P. W. for 2/5 of $50,000 ... (From Pittsylvania to Wythe Co.)	20,000

3/17/51- 85 Danville & Wytheville Tpke Co. Name of Mawbrey's Gap Tpke Co. changed to this. Capital $30,000 and B. Y. W. for 3/5 18,000
Authorized increase by $20,000, of which B. P. W. 3/5 12,000
(From Pittsylvania Co. towards Wythe Co.)
See Mawbrey's Gap Tpke Co.

2/10/53-189 Capital increased by $25,000 and B. P. W. for 3/5 15,000

3/26/60-300 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/15/56-123 Dinwiddie Plank Road Co., Ineptd., B. P. W. for 3/5 of $10,000 6,000
(Dinwiddie Co.)
The above subscription to be paid out of the unexpended balance of the appropriation to Brunswick & Roanoke Plk Rd. Co., provided stockholders of last mentioned road consent.
See Brunswick & Roanoke Plk Rd. Co.

2/ 1/39- 95 Dunkard Creek Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5 .....
(From point in Monongalia Co. to intersect Middletown & Wheeling Tpke.)

3/13/47-124 Capital reduced to $10,000, and B. P. W. for 2/5 of the reduced capital instead of 2/5 of $5,000

2/12/48-216 B P W.'s subscription increased to 3/5..... 6,000
3/24/48-196 Dunlap's Creek Tpke Co., Ineptd., $4,000, and B. P. W. for 3/5 2,400
(From mouth of Oglee's Creek in Alleghany Co. to White Sulphur & Sweet Springs Tpke in same Co.)

3/31/58- 99 East River & Princeton Tpke Co., Ineptd., B. P. W. to turn over to—the proportionate share of unapplied portion of State's subscription to Mechanicksb'g & Wythe Tpke Co. This to be an independent Co. for that part of the Mechan. & Wythe Tpke lying between East River and Princeton in Mercer Co. See Mec. & Wythe Tpke Co.

3/22/60-278 East River & Princeton Tpke Co., Incptd., $8,000, and B. P. W. for 3/5..... 4,800
(Mercer Co.)

2/18/54- 51 El Dorado Tpke Co., Incptd., $13,000, and B. P. W. for 3/5 7,800
(From Culpeper Co. to Rappahannock Co.)

2/ 9/60-290 Capital increased by $7,000 and B. P. W. for 3/5 4,200

2/27/60-289 Elk River Tpke Co., Incptd., $20,000 and B. P. W. for $12,040 12,040
(From Kanawha Co. to Braxton Co., with branch to Roane Co.)

3/ 9/48-203 Estillville Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(Scott Co.)

2/14/23- 78 Fairfax Tpke Co. B. P. W. for 160 shares (Act 2/ 1/1813- 51 shows par val. to be $50.) 8,000

1/ 7/20-67 Fallsbridge Tpke Co., B. P. W. for $24,000 of stock of 24,000

2/22/26- 65 Capital increased and B. P. W. for $8,000 more. 8,000

3/18/53-178 Farmville & Buckingham Plank Road Co. Amends incorporating act and B. P. W. for 900 shares at $50 45,000
(From Prince Edward Co. to Buckingham Co.)

1/13/23- 77 Fauquier & Alexandria Tpke Co. B. P. W. for $30,000 of increased capital 30,000

3/24/51-110 Fayette & Blue Sulphur Springs Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Fayette Co. to Greenbrier Co.)

3/26/60-284 Fetterman & Cove Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 4,800
(From Taylor Co. to Barbour Co.)

2/26/33- 98 Fincastle & Blue Ridge Tpke Co. Capital reduced to $8,000, and B. P. W. for 2/5 3,200
(Botetourt Co.)

5/24/51-108 Fincastle & Covington Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5 7,200
(Botetourt and Alleghany Counties.)

3/30/53-217 Fish Creek Road Co., Ineptd., $10,000, and B. P. W. for 3/5 6,000
(Marshall Co.)

3/10/53-200 Franklin & Circlesville Tpke Co., Ineptd., $4,000, and B. P. W. for 3/5 2,400
(Pendleton Co.)

2/ 2/50- 77 Fredericksburg & Valley Plank Road Co., Ineptd., $100,000, and B. P. W. for 3/5 60,000
(From Spottsylvania to Green and Rockingham Counties.)

3/31-51- 82 Capital increased by $50,000, and B. P. W. for 3/5 30,000

3/22/53-179 Capital increased by $74,000 and B. P. W. for 3/5 44,400

3/27/48-210 Front Royal Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5.....
(From Front Royal in Warren Co. to point on the Valley Tpke.)

2/ 9/50- 83 Capital increased to $40,000, and B. P. W. for 3/5 of all 24,000

2/17/51- 98 Capital increased by $20,000, and B. P. W. for 3/5 12,000

4/ 1/48-209 Front Royal & Gaines Cross Road Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5 9,000
(From Warren Co. to Rappahannock Co.)

2/ 1/47-125 Giles, Fayette & Kanawha Tpke Co. B. P. W. for $16,000 (2/5) to be expended in Fayette and Monroe Counties 16,000
(From Kanawha Co. at Salt Works by the falls of Kanawha Riv. and Vandall's in the Loop to Court House of Giles Co.)

3/15/49-133 B. P. W. for additional $8,000 8,000

3/ 7/50- 95	B. P. W. for additional $6,000	6,000
2/25/53-193	B. P. W. for additional $15,000	15,000
3/29/53-213	Gilmer & Braxton Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 ..... (From Gilmer Co. to Braxton Co.)	7,200
3/19/50- 95	Gilmer, Ripley & Ohio Tpke Co., Incptd., $50,000, and B. P. W. for 3/5 ..... (From Gilmer Co. to Ohio Riv. and down same to West Columbia in Mason Co.)	30,000
3/20/60-296	Capital increased by $12,000, and B. P. W. $20,000 and B. P. W. for 3/5.....	7,200
3/15/49-132	Glenville & Charleston Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... (From Gilmer Co. to Kanawha Co.)	12,000
2/16/53-192	Gnatty Creek & West Union Tpke Co., Incptd., $18,000, and B. P. W. for 3/5 ..... (From mouth of Gnatty Creek by Phillipi in Barbour Co., crossing Cheat River in Randolph Co. to W. Union in Preston Co.)	10,800
3/20/50- 82	Goony Gap Tpke Co., Incptd., $1,500, and B. P. W. for 3/5 ..... (Rappahannock Co. to Warren Co.)	900
1/21/54- 50	Gooney Manor Tpke Co., Amends incorporating act. Capital $6,000, B. P. W. 3/5..... (Rappahannock and Warren Counties.)	3,600
4/ 2/39- 94	Graves Creek Tpke Co., Incptd., $12,000, and B. P. W for 2/5. (From Elizabethtown in Marshall Co. to Wheeling in Ohio Co.)	
2/11/48-224	Capital increased to $20,000, and B. P. W. for 3/5 of whole instead of above subscription.....	12,000
3/21/50-101	Grave Creek & Pennsylvania Line Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 ..... (From Grave Creek in Marshall Co. to the Pennsylvania line.)	4,800

3/10/34-173	Greenville & Panther Gap Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 ..... (Augusta Co. to Rockbridge Co.)	4,000
3/30/53-218	Guyandotte Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 ..... (From Cabell Co. to Logan Co.)	9,000
3/15/49-125	Hampshire & Morgan Tpke Co., Incptd., $11,000, and B. P. W. for 3/5 ..... (From Hampshire Co. to Morgan Co.)	6,600
3/11/50- 87	Capital increased by $13,000 for branch from point in Hampshire Co. through Gainesborough to Winchester and B. P. W. for 3/5	7,800
2/24/51-102	The subscribers to the stock authorized in act next above incorporated as a new Co. by name of North Frederick Tpke Co. See N. Fred. Tpke Co.	
3/24/51-105	Hardy & Randolph Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 ..... (From Petersburg in Hardy Co. by Pendleton Co. to Beverly in Randolph Co.)	18,000
3/ 8/47-118	Hardy & Winchester Tpke Co. Changes par val. of shares from $100 to $50, and B. P. W. for 80 shares. (From point on Great Cacapon River in Hardy Co. to Winchester in Frederick Co.)	
2/22/48-215	Increases B. P. W.'s subscription to 3/5 instead of 2/5 of not less than $16,000, for extension of road from Wardensville to Moorfield (Hardy Co.)	9,600
3/28/48-215	B. P. W. for 2/5 of additional $6,000 for finishing road between N. W. Tpke and Wardensville and for branch to Capon Springs in Hampshire Co.	2,400
3/15/49-122	Capital increased to $33,000, and B. P. W. for such amount as to make its subscription 3/5 of whole $33,000 (which amounts to increase of $7,800)	7,800

3/18/50- 87 Capital increased by $2,000, for branch in Hampshire Co., and B. P. W. for 3/5 1,200

3/27/51-104 Capital increased by $4,000, and B. P. W. for 3/5 2,400

3/26/51- 97 Harrisonburg & Franklin Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Harrisonburg in Rockingham Co. to Franklin in Pendleton Co.)

3/28/48-222 Harrisville Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 4,000
(Ritchie Co.)

3/17/49-134 B. P. W.'s subscription increased to 3/5 2,000

3/ 3/51-119 Capital increased by $3,500 and B. P. W. for 3/5 2,100

3/23/60-286 Harrisville & Ellenboro Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(Ritchie Co.)

3/28/51- 96 Hazel River Tpke Co., Incptd., $16,000, and B. P. W. for 3/5 9,600
(From Woodville in Rappahannock Co. to head of navigation of Hazel Riv.)

2/18/50- 86 Hedgesville & Potomac Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(Berkeley Co.)

3/ 9/49-121 Hillsborough & Harper's Ferry Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From Hillsborough in Loudon Co. to Harper's Ferry in Jefferson Co.)

3/ 2/38-135 Holliday's Cove Tpke Co., Incptd., $10,000, but increase allowed up to $25,000, and B. P. W. for 2/5.
(From Ohio River in Brooke Co. to Pennsylvania line.)

3/26/39- 95 Capital increased to $30,000, and B. P. W. for 2/5.

3/17/51- 93 Co. to construct a branch to Wellsburg in Brooke Co. B. P. W.'s subscription changed to 3/5 of am't authorized by Act of 3/2/38-135 (first above) 15,000

4/ 5/58-101 Incorporates Holliday's Cove & Wellsburg Tpke Co. as an independent Co. for the branch to Wellsburg mentioned in act just above; and turns over to this new Co. the unexpended appropriation to Holliday's Cove Tpke Co. See H's Cove & Wellsb'g, etc. Co.

3/29/51-124 Holliday's Cove & New Cumberland Tpke Co., Ineptd., $4,000, and B. P. W. for 3/5 2,400
(From a point on Holliday's Cove Tpke to New Cumberland in Hancock Co.)

4/ 5/58-101 Holliday's Cove & Wellsburg Tpke Co., Ineptd. This to be an independent So. for building the branch road to Wellsburg in Brooke Co., authorized to be built by the Holliday's Cove Tpke Co. by act 3/17/51-93, and the Co. hereby incorporated to receive the unexpended appropriation to said Holliday's Cove Tpke Co. See H's Cove Tpke Co.

3/31/51-109 Hot Springs & Clifton Forge Tpke Co., Ineptd., $6,000, and B. P. W. for 3/5 3,600
(From Bath Co. to Clifton Forge in Alleghany Co.)

3/ 9/48-193 Howardsville Tpke Co. Capital increased to $35,000, and B. P. W. for 2/5 14,000
(From Howardsville in Albemarle Co. to forks of Rockfish River in Nelson Co.)

3/17/49-115 B. P. W.'s subscriptions increased to 3/5 7,000

3/31/51-105 Capital increased by $10,000, and B. P. W. for 3/5 6,000

4/ 1/53-221 Capital increased by $15,000, and B. P. W. for 3/5 9,000

3/29/53-215 Huntersville & Monterey Tpke Co., Ineptd., $16,000, and B. P. W. for 3/5 9,600
(From Huntersville in Pocahontas Co. to Monterey in Highland Co.)

3/20/32-183 Huntersville & Warm Springs Tpke Co., Incptd., $16,000, and B. P. W. for 2/5 6,400
(From Huntersville in Pocahontas Co. to Warm Springs in Bath Co.)

2/15/60-297 Huntersville & Warm Springs Tpke Co., Incptd., $7,000, and B. P. W. for 3/5 4,200
(From Huntersville in Pocahontas Co. to Warm Springs in Bath Co. on or near the line of the old tpke from H. to W. Spgs.)

2/27/54- 49 Indian Creek Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Mouth of Indian Creek in Tazewell Co. by best route to point on Price's Tpke and Cumberland Gap Road at Liberty Hill.)

3/28/38-127 Indian Draft Tpke Co., Incptd., $7,000, and B. P. W. for 2/5 2,800
(From Salt Sulph. Springs in Monroe Co. to Blue & Red Sulph. Springs Tpke near mouth of the Indian Draft.)

4/ 2/31-205 Jackson's River Tpke Co., B. P. W. for 2/5 of cap. stock. (Act 2/21/29-112 shows cap. $20,000.) 8,000
From Warm Springs to Kanawha Tpke at Callaghans.)

4/ 1/48-172 B. P. W. to pay to—account bridges across Jackson River 3,000

3/31/48-199 Jacksonville & Bent Mountain Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From Jacksonville in Floyd Co. by way of point in Montgomery Co. to Roanoke Co.)

3/15/58- 96 State's interest in—released to Counties of Floyd and Roanoke; to become a free road.

3/24/51- 88 Jacksonville & Christiansburg Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From Floyd Co. to Montgomery Co.)

3/12/53-203 Capital increased by $14,000, and B. P. W. for 3/5 8,400

3/29/51- 81 James River & Clover Hill Plank Road Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(Nelson Co. to Appomattox Co.)

2/24/60-281 Jane Lew & Upshur Tpke Co., Incptd. This Co. to take over that part of the West Milford & New Salem Tpke that lies in Lewis & Upshur Counties. See West Milford and New Salem Tpke Co.

3/28/51-100 Jefferson & Frederick Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From Smithfield in Jefferson Co. to Frederick Co.)

3/26/60-298 Jeffersonville, Marion & Rye Valley Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Jeff'ville in Tazewell Co. to Rich Valley, thence to Marion in Smyth Co. and thence to Blue Springs Road in Rye Valley.)

3/ 4/50- 92 Jonesville & Little Stone Gap Tpke Co., Incptd., $7,000, and B. P. W. for 3/5 4,200
(From Lee Co. at end of Little Stone Gap Road to Yankham Station, thence to Jonesville, and branch from Yankham Station across Lovelace Gap to Wild Cat Valley Road.)

3/17/51- 93 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/ 7/48-196 Jordan's Furnace & Rockbridge Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(From Alleghany Co. to Rockbridge Co.)

3/17/49-111 Junction Valley Tpke Co., Incptd., $60,000, and B. P. W. for 3/5 36,000
(From Botetourt Co. to Staunton in Augusta Co.)

3/31/53-221 Capital increased by $25,000, for completing and B. P. W. for 3/5 15,000

12/22/57- 95 Appropriation to pay for—account of purchase of by B. P. W. at sale thereof 25,000

3/25/48-216 Kingwood & West Union Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 6,000
(From W. Union in Preston Co. to Kingwood in same Co. and thence to Monongalia Co.)

3/24/51-116 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/28/53- 71 State appropriation to for macadamizing parts of 28,000

3/22/60-295 Knob Tpke Co., Incptd., $12,500, and B. P. W. for 3/5 7,500
(From point in Washington Co. by Abingdon to Tennessee line.)

3/17/49-127 Knobley Valley Tpke Co., Incptd., $14,000, and B. P. W. for 3/5 8,400
And capital may be increased by $4,000, of which B. P. W. for 3/5 2,400
(From Hardy Co. line by Ridgeville in Hampshire Co. through Knobley Valley to B. & O. R. R. near Cumberland, Maryland.)

3/11/50- 88 Name of this Co. changed to Patterson's Creek Valley Tpke Co. Extends road to point on Moorfield & Alleghany Tpke and B. P. W. for 3/5 of $2,500, additional capital. See Patterson's Creek Valley Tpke Co.

1/25/39- 83 Lafayette & English's Ferry Tpke Co. B. P. W. for 2/5 of capital of. (Act 3/21/38-121 shows capital $8,000.) 3,200
(From Lafayette in Montgomery Co. by Christiansburg to E.'s Ferry on New River.)

3/31/51-117 Leading Creek & Buffalo Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From point on Beverly & Fairmont Road near Leading Creek Bridge to point in Preston Co.)

3/ 9/53-200 Capital increased by $6,000, and B. P. W. for 3/5 3,600

3/31/48-208 Leeds Manor Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(Fauquier Co.)

3/15/58- 96 State's interest in—released to Fauquier Co.

3/19/50- 85 Leesburg Tpke Co., B. P. W. for $7,850, being 2/5 of cost of extension to Fairfax Co. 7,850

2/20/32-177 Leesburg & Snickers Gap Tpke Co., B. P. W. for $20,000 20,000
(Loudon Co.)

3/16/47-119 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/21/60-282 Lenn's Creek & Logan Court House Tpke Co., Incptd., $20,000, and B. P. W. for $12,450 12,450
(From Lenn's Creek in Kanawha Co. by way of Peytona in Boone Co. to Logan C. H.)

2/15/54- 47 Letart Falls & West Columbia Tpke Co., Incptd., $3,500, and B. P. W. for 3/5 2,100
(From Letart Falls on Glenville & Ohio Tpke through West Columbia to lower side of Ten Mile Creek.)

3/ 9/36-214 Lewisburg & Blue Sulphur Springs Tpke Co., B. P. W. for 80 shares of. (Act 3/12/34-166 shows capital $10,000, in shares of $50)..... 4,000
(From Lewisburg in Greenbrier Co. to Blue Sulph. Sprgs. in Monroe Co.)

3/30/37-145 Capital increased by $2,500, and B. P. W. for 2/5 1,000

3/21/53-179 Lewiston Plank Road Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(Lunenburg Co.)

2/19/29- 29 Lexington & Covington Tpke Co., Incptd., $20,000, and B. P. W. for 160 shares (2/5) 8,000
(Alleghany and Rockbridge Counties.)

2/20/32-181 Capital increased by $16,000, and B. P. W. for 2/5 6,400

4/ 8/31-209 Lexington & Mountain Canal Tpke Co., Incptd., $5,000, and B. P. W. for 80 shares (2/5)..... 2,000
(Rockbridge Co.)

2/12/33-101 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/31/37-153 Little Stone Gap Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(Lee Co. to Russell Co.)

3/17/49-133 Logan, Raleigh & Monroe Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Logan Co. to Fayette Co.)

3/16/53-205 Capital increased by $16,000, and B. P. W. for 3/5 for extension from Raleigh C. H. to Blue Sulph. Springs in Greenbrier Co. 9,600

2/25/50- 85 Loudon & Berlin Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From point in Loudon Co. to point on Potomac Riv. opposite Berlin in Maryland.)

2/25/53-174 Lunenburg Plank Road Co. Amends incorporating act, and B. P. W. for 3/5 (3/5 of $50,000) 30,000
(From Nottoway Co. to Lunenburg Co.)

2/15/54- 55 Capital increased by $30,000, and B. P. W. for 3/5 18,000

3/31/51- 98 Luray & Front Royal Tpke Co., Incptd., $20,000 and B. P. W. for 3/5 12,000
(From Luray in Page Co. to Fr. Royal in Warren Co.)

2/14/53-191 Capital increased by $30,000, for extension into Rockingham Co. and by $10,000, for improvements and B. P. W. for 3/5 24,000

3/14/39- 85 Lynchburg & Buffalo Springs Tpke Co. Capital increased to $25,000, and B. P. W. for 2/5.. 10,000

2/18/32-179 Lynchburg & Concord Tpke Co., Incorporated agreeably to act 2/11/32-71 Capital $12,000, and B. P. W. for 2/5 4,800

1/17/23- 83 Lynchburg & Salem Tpke Co. B. P. W. for 300 shares of 30,000

2/16/56- 31 Releases State's interest in so much of—as lies in Bedford and Roanoke Counties, to said counties.

3/16/47-120 Manassa's Gap Tpke Co., Incptd., $45,000, and B. P. W. for 2/5 18,000
(Fauquier Co.)

3/ 6/24- 74 Manchester & Petersburg Tpke Co., B. P. W. for $8,000 8,000
(Chesterfield and Dinwiddie Counties.)

3/12/53-203 Marshall County Road Co. Incorporated for widening and grading. (The act does not give any name to the Co.) Road extends from Marshall C. H. up Riggs Hill, etc., to point on Fish Creek in Ohio Co. Capital $5,000, and B. P. W. for 3/5 3,000

2/25/58- 97 Releases State's interest in—to Counties of Marshall and Ohio. The name of the Co. is given in this act as Wheeling & Marshall Co. Tpke.

3/17/49-123 Martinsburg & Potomac Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Martinsburg in Berkeley Co. to point on Potomac Riv. opposite Williamsport, Md.)

3/34/38-129 (131) Martinsburg & Winchester Tpke Co., Incptd., $60,000, and B. P. W., for $33,600.
(From Martinsburg in Berkeley Co. to Winchester in Frederick Co.)

3/24/48-211 Revives above act.

1/20/49-122 Divides the road into sections; capital reduced and B. P. W. for 3/5 in lieu of subscription above 27,000

3/17/51- 92 Martin's Creek Free Road Co., Ineptd., $3,400, and B. P. W. for 3/5 2,040
(Lee County.)

3/ 8/53-176 Marysville Plank Road Co. B. P. W. for 3/5 (Act 5/13/52-133 shows cap to be $25,000.) 15,000
(Charlotte Co.)

2/28/54 Capital increased by $35,000, and B. P. W. for 3/5 21,000

3/24/60-285 Mason & Cabell Tpke Co., Ineptd., $20,000, and B. P. W. for 3/5 12,000
(From Mason Co. to Cabell Co.)

3/ 7/48-198 Mawbrey's Gap Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5.
(From Pittsylvania Co., by Patrick Co. and Floyd Co. to point in Montgomery Co.)

3/17/51- 85 Amends above act, changes name to Danville & Wytheville Tpke Co. Capital $30,000, with authorized increase by $20,000, and B. P. W. for 3/5. See Danville & Wytheville Tpke Co..... 30,000

3/ 4/51-87 Mechanicsburg & Wythe Tpke Co., Ineptd., $5,000, and B. P. W. for 3/5 3,000
(From Mec'bg. in Giles Co. to Wythe Co.)

3/12/53-204 B. P. W. for 3/5 of $15,000, for extension from Mechanicsburg to Cumberland Gap Tpke in Mercer Co., thence to Princeton, with another branch in Mercer Co. (See act 4/20/52-144 making this route.) 9,000

3/31/58- 99 B. P. W. to turn over to East River & Pinceton Tpke Co., an independent Co., incorporated by this act for the road between East River and Princeton, the unexpended proportion of State's subscription to Mechans'bg & Wythe Tpke Co.
See East River & Princeton Tpke Co.

4/ 2/60-289 With consent of Mecs'bg & Wythe Tpke Co., $500 of State's subscription to said Co. to be transferred to Raleigh & Grayson Tpke Co.

3/15/31-207 Middle Tpke Co. B. P. W. for 239 shares. (Act 2/14/1818-135 shows capital $50,000, but does not show par value.)
(From Fairfax Co. to point on Little River or on line of District of Columbia.)

3/17/51-107 Middlebrook & Brownsburg Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... 9,000

3/29/53-214 Capital increased by $5,000, and B. P. W. for
(From Staunton in Augusta Co. to Lexington in Rockbridge Co.)
3/5 3,000

3/25/39- 93 Middletown & Wheeling Tpke Co., B. P. W. for 600 shares (Act 4/6/38-135 shows cap. $30,000 divided into shares of $20 each..... 12,000
(From N. W. Tpke at Tygart's Valley bridge by way of Middletown to Wheeling in Ohio Co.)

2/18/54- 53 Middleway & Gerardstown Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Middleway in Jefferson Co. by Gerardstown to point on Back Creek.)

4/ 2/53-222 Mill Point & Nicholas Tpke Co., Incptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Mill Point in Pocahontas Co. to Cranberry River in Nicholas Co.)

3/24/48-213 Millwood & Berryville Tpke Co., Incptd., $20,000, and B. P. W. for 2/5.
(In Clarke Co.)

3/21/51- 99 Capital reduced to $15,000, and B. P. W. 3/5. 9,000

3/23/60-287 Monterey & Warm Springs Tpke Co., Incptd., $12,500, and B. P. W. for 3/5..... 7,500
(Highland Co. to Bath Co.)

3/31/38-132 Moorefield & Alleghany Tpke Co., Incptd., $15,000, and B. P. W. for 360 shares (at $25).. 9,000
(From Moorefield in Hardy Co. to N. W. Tpke in the Alleghany mountains.)

3/ 7/49-126 Incorporated again, $15,000, and B. P. W. for 3/5 9,000
And in addition State appropriation of $4,500 for stem in Hardy Co. 4,500

3/11/53-202 Capital increased by $2,000, and B. P. W. for 3/5 1,200

1/20/58-147 Transfers this road, except the Petersburg stem, to County Court of Hardy Co.

3/22/47-118 Moorefield & North Branch Tpke Co., Ineptd., $25,000, and B. P. W. for 2/5.

3/10/48-216 Capital increased to $35,000, and B. P. W. for 3/5 of whole instead of above subscription..... 21,000

3/ 7/49-125 Capital increased by $18,000, for extension to Pendleton Co. and B. P. W. for 3/5..... 10,800

3/11/50- 88 Capital increased by $2,500, and B. P. W. for 3/5 1,500

3/11/50- 89 Capital increased by $10,000, for extension from Franklin in Pendleton Co. to Monterey in Highland Co., and B. P. W. for 3/5..... 6,000

2/25/51-100 Morgan & Frederick Tpke Co., Ineptd., $6,000, by individuals and $9,000, by B. P. W..... 9,000
(From point near Gainesborough on Morgan & Hampshire Tpke to point on Potomac River in Morgan Co.)

3/15/49-128 Morgantown & Bridgeport Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Morgantown in Monongalia Co. via. Palatine in Marion Co. to Br. in Harrison Co.)

2/ 7/50-100 Capital increased by $12,000, and B. P. W. for 3/5 for extension into Harrison Co..... 7,200

3/12/53-203 Capital increased by $12,000, and B. P. W. for 3/5 7,200

3/30/39- 92 Morgantown & Clarksburg Tpke Co., Incptd., $30,000, and B. P. W. for 2/5..... 12,000
(From Clarksburg in Harrison Co. by way of Morgantown in Monongalia Co. and Ice's Ferry to Pennsylvania line.)

Morgantown, Kingwood & West Union Tpke Co.
(See Kingwood & West Union Tpke Co.

3/24/60-300 Mountain Lake & Salt Sulphur Springs Tpke Co. Capital increased by $8,000, for completion of road, and B. P. W. for 3/5 (Incptd by Act 3/3/56-137) 4,800
(From Salt Sulph. Springs in Monroe Co., by way of Mt. Lake in Giles Co., to point on Va. & Tenn. R. R. in Montgomery or Pulaski Co.)

3/ 9/60-293 Mount Jackson & Howard's Lick Tpke Co., B. P. W. for $7,200 (2/5) (Incptd by Act 2/6/56-133) 7,200
(From Mt. Jackson in Shenandoah Co. to Howard's Lick in Hardy Co.)

3/31/51-113 Mud River & Valley Tpke Co., Incptd., $3,000, and B. P. W. for 3/5..... 1,800
(Down Mud River to Jas. Riv. & Kanawha Tpke Road in Cabell Co.)

2/28/37-144 Natural Bridge Tpke Co., B. P. W. for 64 shares (Act 2/29/36-213 shows $16,000 in shares of $100)..... 6,400
(Rockbridge Co.)

3/28/51-121 Newark Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(From Court House of Wirt Co. through Newark to Parkersburg & Staunton Road at mouth of Hughes River.)

3/21/53-221 New Castle & Gap Mills Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From New Castle in Craig Co. by best route to Gap Mills in Monroe Co.)

2/25/50- 88 New Creek & Hardy Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Hardy Co. to Hampshire Co.)

4/ 4/48-225	New Manchester Tpke Co., Incptd., $5,000, and B. P. W. for 2/5	2,000
	(From Ohio River to Pennsylvania line.)	
3/28/48/194	New Market & Buffalo Springs Tpke Co., Incptd., $10,000, and B. P. W. for 2/5.....	4,000
	(From New Market in Nelson Co. at James River Canal to tpke road near Buffalo Springs in Amherst Co.)	
3/ 6/48-205	New Market & Sperryville Tpke Co., Incptd., $100,000, and B. P. W. for 3/5.....	60,000
	(From N. Market in Shenandoah Co. to Sperryville in Rappahannock Co.)	
3/ 6/51- 95	Capital increased by $15,000, and B. P. W. for 3/5	9,000
2/10/53-189	New Martinsville & Knob Fork Tpke Co., Incptd., $12,000, and B. P. W. for 3/5.....	7,200
	(From New M. in Wetzel Co. eastwardly to convenient point on B. & O. R. R.)	
3/29/53-217	New Martinsville & Proctor Tpke Co., Incptd., $4,400, and B. P. W. for 3/5	2,640
	(From New M. in Wetzel Co. to Marshall Co. line.)	
2/24/51-102	North Frederick Tpke Co. Incorporation as—of subscribers to the additional stock of $13,000, of the Hampshire & Morgan Tpke Co., authorized by Act 3/11/50-87 for branch from Hampshire Co. through Gainesborough to Winchester. See Hampshire & Morgan Tpke Co...	7,800
3/15/51-100	Capital increased by $4,000, and B. P. W. for 3/5	2,400
2/25/53-193	Capital further increased by $2,000 for a road to the Hampshire & Morgan Tpke. and B. P. W. for 3/5	1,200
2/17/51-102	North River Tpke Co., Incptd., $9,000, and B. P. W. for 3/5	5,400
	(From point on N. W. Tpke in Hampshire Co. to point on Moorfield & Wardensville Road.)	

4/ 5/38-133 North River & Moorfield Tpke Co., Incptd., $28,000, and B. P. W. for 2/5 11,200
(From Moorfield in Hardy Co. to point in Hampshire Co. on N. W. Tpke.)

2/27/27- 85 Northwestern Road Co., Incptd., $75,000, and B. P. W. for 2/5 30,000
(From Winchester in Frederick Co. to the Ohio River.)

4/ 1/48-201 Old Court House & Abingdon Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From Old Court House of Russell Co. to Abingdon in Washington Co., thence up Laurel Fork to Tennessee line.)

3/16/49-120 Orlean & Salem Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Orlean in Fauquier Co. to Salem & Paris Road.)

2/28/54/ 52 Paris & Piedmont Station Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(Fauquier Co.)

3/11/50- 96 Parkersburg & Elizabethtown Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 4,800
(From Elizabethtown in Wirt Co. to Parkersburg in Wood Co.)

3/11/50- 88 Patterson's Creek Valley Tpke Co. Name of Knobley Valley Tpke Co. changed to above, and route of road to be from point on Hardy Co line down Pat.'s Cr. Valley to Patterson's Creek depot on B. & O. R. R., with extension to convenient point on Moorfield & Alleghany Tpke. Capital increased by $2,500, and B. P. W. for 3/5 1,500
See Knobley Valley Tpke Co.

2/ 4/48-200 Pepper's Ferry & Holston Tpke Co., Incptd., $26,000, and B. P. W. for 3/5..... 15,600
(From P's Ferry in Pulaski Co. to end of Shannon's Tpke in Giles Co., thence up Walker's Creek Valley to Salt Works in Smyth Co.)

3/ 8/53-175 Petersburg & Jerusalem Plank Road Co., Incptd., $75,000, and B. P. W. for 3/5..... 45,000
(From Petersburg in Dinwiddie Co. to Jerusalem in Southampton Co.)

3/ 7/49-130 Phillipi & Buckhannon Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Phillipi in Barbour Co. to Buckhannon in Lewis Co.)

2/20/38-117 Pittsylvania, Franklin & Botetourt Tpke Co., Incptd., $40,000, with privilege of increasing to $60,000, and B. P. W. for 2/5 24,000
(In Pittsylvania, Franklin and Botetourt Co.'s)

3/16/36-208 Pittsylvania & Lynchburg Tpke Co. Capital reduced to $17,500, and B. P. W. for 140 shares (2/5) 7,500
(In Pittsylvania and Campbell Counties.)

3/30/53-218 Pleasant Valley & Tunnelton Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Ice's Ferry on Cheat River, by Pleasant Valley meeting house in Preston Co. to Tunnelton on B. & O. R. R.)

2/ 5/48-221 Point Pleasant & Ripley Tpke Co., Incptd., $50,000, and B. P. W. for 3/5..... 30,000
(From Gilmer Co. through Ripley in Jackson Co. to Point Pleasant in Mason Co.)

3/ 4/51-103 Potomac Tpke Co., Incptd., $4.500, and B. P. W. for 3/5..... 2,700
(From point on Cacapon & N. Branch Tpke in Hampshire Co. to point not East of the Morgan Co. line.)

3/ 7/50-80 Princeton & Red Sulphur Tpke. Co., Incptd., $7,000, and B. P. W. for 3/5..... 4,200
(From Princeton in Mercer Co. to Red Sulphur Springs in Monroe Co.)

3/21/51-110 Amends above so as to make the subscription of $4,200 an appropriation instead of a subscription, and makes this a free road.

3/ 7/51-82 Providence Branch Plank Road Co., Incptd., $10,000, and B. P. W. for 2/5..... 4,000
(From Fairfax Court House to point on Alexandria and Gordonsville R. R.)

3/28/53-212 Pulaski & Giles Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Giles Co. to Pulaski Co.)

2/28/54-47 Raleigh & Boone Road Co., Incptd., $3,000, and B. P. W. for 3/5..... 1,800
and may increase by $2,000, of which 3/5 by B. P. W..... 1,200
(From Boone Co. to Raleigh Co.)

4/ 2/50-289 Raleigh & Grayson Tpke Co., $2,500 of State's subscription to Mechanicsburg & Wythe Tpke Co. to be transferred to Raleigh and Grayson Tpke Co., with consent of stockholders of former Co.

3/17/56-143 Raleigh & Tazewell Line Tpke Co. Incorporated as an independent Co. for making that part of the Raleigh & N. C. Road lying between the Giles, Fayette & Kan. Tpke in Raleigh County and the Co. line of Wythe & Tazewell Counties.
Capital $4,000. This Co. to receive a proportionate share of the unapplied portion of State's subscription to the Raleigh & N. C. Road.
See Raleigh & N. C. Road.

3/ 3/60-280 Amends above act by changing name of this Co. to Raleigh & Wythe Line Tpke Co., making its capital $8,000 instead of $4,000, and having B. P. W. subscribe for 3/5 instead of giving to this independent Co. a portion of the unapplied subscription of B. P. W. to Raleigh & N. C. Line Road 4,800

3/ 3/ 60-280 Raleigh & Wythe Line Tkpe Co.
See Raleigh & Tazewell Line Tpke Co.

3/25/53-210 Randolph & Moorfield Tpke Co., Incptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Beverly in Randolph Co. to Petersburg in Hardy Co.

2/18/50-98 Ravenswood & Reedy Creek Tpke Co., Incptd., $10,000 and B. P. W. for 3/5..... 6,000
(From point in Reedy Creek in Wirt Co. to Ravenswood on Ohio River.)

3/24/51-121 Capital increased by $5,000, and B. P. W. for 3/5..... 3,000
and authorizes extension to town of California in Wirt Co.

3/20/37-144 Red & Blue Sulphur Springs Tpke Co., B. P. W. for 100 shares (2/5). (Act 1/18/36-214 shows capital $12,500, par val. $50)..... 5,000
(From Blue Sul. Springs in Greenbrier Co. to Red Sul. Springs in Monroe Co.)

3/23/39- 86 B. P. W. for 76 additional shares, being 2/5 of increase allowed by act of 3/27/38..... 3,800

3/15/51-110 B. P. W. to appropriate for bridge over Indian Creek 1,400

3/24/51-117 Reedy & Harrisville Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From the Three Forks of Reedy through Palatine in Wirt Co. to Harrisville in Ritchie Co.)

3/14/49-113 Rich Patch Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(Alleghany and Botetourt Counties.)

3/12/51-121 Ritchie & Gilmer Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... 9,000
(From Schumla on N. W. Tpke through Harrisville in Ritchie Co. to Glenville in Gilmer Co.)

1/28/33-102 Rivanna & Fredericksburg Tpke Co., Incptd., $30,000, and B. P. W. for 2/5..... 12,000
(From Albemarle Co. to Spottsylvania Co.)

3/ 4/53-45 Rivesville & New Brownsville Tpke Co., Incp'd., $8,000, and B. P. W. for 3/5..... 4,800
(From Paw Paw Creek in Marion Co. to Pennsylvania line at New Br. in Monongalia Co.)

4/ 2/39-96 Rockfish Navigation & Blue Ridge Tpke Co., Incptd., $60,000, and B. P. W. for 2/5..... 24,000
(Improvement of navigation of Rockfish Riv. and Tpke up same to point in Augusta Co.)
(See same title under head of Navigation Companies.)

3/18/50-81 Rockingham Tpke Co., Incptd., $100,000, and B. P. W. for 3/5..... 60,000
From Standardsville in Greene Co. by Swift Run Gap to point on Valley Tpke.)

2/28/53-193 Capital increased by $50,000, and B. P. W. for 3/5 30,000

3/18/47-111 Rocky Mount Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From point on Lynchburg & Salem Tpke west of New London, by Franklin Court House or Rocky Mount to Jacksonville in Floyd Co.)

2/19/48-197 Capital increased by $30,000, and B. P. W. for 3/5..... 18,000
B. P. W. also for 3/5 of additional increase allowed of $10,000 for branch to Patrick Co... 6,000

3/ 9/53-72 B. P. W. authorized to purchase the mountain section of this road and widen same as recommended by engineer and Sup't of Floyd C. H. & Hillsville Road, provided this can be done at cost not exceeding 4,500
(See Floyd C. H. & Hillsville Road.)

3/ 9/53-198 Russell Old Court House & Abingdon Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From old Court House of Russell Co. through Little Moccasin Gap to Abingdon in Washington Co., thence up Laurel Fork to Tenn. line.)

3/ 1/54-48 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000

3/ 6/48-202 Russell & Washington Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(Russell and Washington Counties.)

2/ 7/50-93	Capital increased by $1,125, and B. P. W. for 3/5	675
3/15/51-90	Capital increased by $3,000, and B. P. W. for 3/5	1,800
3/15/51-90	Capital increased by $1,250, and B. P. W. for 3/5	750
3/24/51-123	St. Mary's Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... (From Parkersburg in Wood Co. to St. Mary's in same Co.)	6,000
3/10/51-120	Salem & Harrisville Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... (Ritchie Co.)	7,200
2/11/39-182	Salem & Newcastle Tpke Co. Changes par val. of shares to $25 (Act 4/6/38-120 shows cap. $10,000, par val. $50) and B. P. W. for 66 shares for every 100 by others (2/5 about)..... (Botetourt Co. to P's Ferry in Montgomery	4,000
3/25/39-82	Salem & Pepper's Ferry Tpke Co. B. P. W. for 2/5 (Act 3/21/38-120 shows cap. $15,000).. (Botetourt Co. to P's Ferry in Montgomery Co.)	6,000
3/25/58-95	B. P. W. to borrow and pay to as appropriation, for paying the debts of—not over $12,000..	12,000
2/27/54-52	Salem Station & Rappahannock Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5..... (From Salem Station on Manassa Gap R. R. to point in Rappahannock Co.)	18,000
3/ 8/34-166	Salt & Red Sulphur Springs Tpke Co. B. P. W. for 80 shares (Act 1/8/34-165 shows cap. $10,000, par val. $50)..... (Monroe Co.)	4,000
3/31/60-303	Saltville & Laurel Tpke Co., Ineptd., $8,000, and B. P. W. for 3/5..... (From Saltville on Va. & Tenn. R. R. to intersect Tkpe from Abingdon to Tenn. line.)	4,800

2/12/53-191 Sand Creek Tpke Co., Ineptd., $2,400, and B. P. W. for 3/5 1,440
(From Jackson Co. to Gilmer, Ripley & Ohio Tpke.)

3/31/51-112 Sandy River Tpke Co., Ineptd., $5,000, and B. P. W. for 3/5 3,000
(From mouth of Big Sandy River up to Cassville in Monongalia Co.)

4/ 6/39-84 Scott & Washington Tpke Co., Ineptd., $20,000, and B. P. W. for 133 shares for every $200 by others (about 2/5) 8,000
(Washington and Scott Counties.)

2/23/21-98 Shepherdstown, Martinsburg & Potomac Tpke Co. B. P. W. for 2/5 (incorporating Act of 1/20/20-59 shows capital $60,000) 24,000
(From Shepherdstown in Jefferson Co. by way of Martinsburg in Berkeley Co. to Potomac River.)

2/20/26-66 Shepherdstown & Smithfield Tpke Co. B. P. W. for $18,575 18,575
(From Sh. in Jefferson Co. to Smithfield in same Co.)
The name of this Co. originally was Shepherdstown & Winchester, but this act changed name to above and made the termini Shep. and Smithfield.

2/11/48-214 B. P. W. for $14,000, being 2/5 of additional capital ($35,000) authorized by Act 3/22/47-116 for extension of road to Winchester in Frederick Co. 14,000

2/ 7/50-99 Shinston Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5 7,200
(From Shinston in Harrison Co. to Doddridge or Tyler Co.)

2/ 9/53-188 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/26/51-118 Simpson's Creek Tpke Co., Ineptd., $7,000, and B. P. W. for 3/5 4,200
(From Harrison Co. to Taylor Co.)

2/ 4/53-187 Sinking Creek & Craig's Creek Tpke Co., Incptd., $3,000, and B. P. W. for 3/5..... 1,800
(Craig Co.)

3/31/60-301 Sir John's Run Tpke Co., Incptd., $7,000, and B. P. W. for 3/5..... 4,200
(From point in Frederick Co. on Berkeley & Hampshire Tpke to point in Morgan Co. on Bath & Potomac Road.

3/27/51-120 Sistersville & Salem Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... 9,000
(For widening and completing the Sistersville & Salem Road.)
See Sistersville to Salem Road.

3/16/31-206 Smithfield, Charlestown & Harpers Ferry Tpke Co. B. P. W. for $14.000 (see Act 2/18/30-86) 14,000
(Jefferson Co.)

2/25/33-99 Capital increased by $10,000, and B. P. W. for 4,000

3/29/53-215 Smithtown Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Smithtown in Monongalia Co. to Morgantown & Beverly Road.)

2/27/22-45 Snickers Gap Tpke Co. B. P. W. for 400 shares of—allowed to be increased by this act. (Act 1/29/1810-67 shows par val. $50.)..... 20,000
(From E. bank of Shenandoah River by way of Snicker's Gap to Winchester in Frederick Co.)

2/21/35-129 Southwestern Tpke Co., Incptd., $100,000, and B. P. W. for 2/5..... 40,000
(From Botetourt Co. to State line in Washington Co.)

3/27/48-204 Sperryville & Rappahannock Tpke Co., Incptd., $50,000, and B. P. W. for 3/5..... 30,000
(From Sperryville in Rappahannock Co. to head of navigation of Rappahannock Riv.

2/19/51-95	Capital increased by $30,000, and B. P. W. for 3/5	18,000
3/ 8/24-68	Staunton & James River Tpke Co., Incptd. B. P. W. for 2/5 of $200,000. (From Staunton in Augusta Co. to Scott's Landing on James Riv.)	
2/12/25-64	Repeals above act; makes cap. $50,000, and B. P. W. to subscribe for 2/5.....	20,000
2/24/26-66	B. P. W. for additional $20,000.....	20,000
2/ 7/33-102	B. P. W. for 2/5 of additional $50,000.....	20,000
3/ 1/47-112	Capital increased $175,000, and B. P. W. for 3/5	105,000
2/20/33-96	Staunton & Jennings Gap Tpke Co., Incptd., $8,000, and B. P. W. for 2/5. (Augusta County.)	
3/ 7/33-96	Amends above act, reduces capital to $6,000. of which B. P. W. to subscribe for 2/5.	
3/29/37-148	Amends above acts, makes capital $9,000. B. P. W. for 2/5.....	3,600
3/28/51-107	Staunton & North River Gap Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... (Augusta County.)	15,000
3/24/51-93	Stone Mountain Free Road Co., Incptd., $2,000, and B. P. W. for 3/5..... (From point 18 miles E. of Lee C. H., crossing Stone Mountain to Ky. line in Harlan Co., Ky.)	1,200
3/27/60-278	Strasburg & Capon Tpke Co. B. P. W. for $3,000 of stock of (See incorporating act of 3/3/56-133.) .... (From Strasburg in Shenandoah Co. to point on Winchester & Moorfield Road at Hoff's Gate.)	3,000

3/15/49-112 Sweet & Salt Sulphur Springs Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... 7,200
(From Sweet Springs in Monroe Co. by way of Salt Sulph. Springs to Red & Blue Sulph. Tpke near mouth of Indian Draft.)

3/25/53-211 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/10/51-91 Tazewell Court House & Saltville Tpke Co., Ineptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Tazewell C. H. by Broad Ford in Smyth Co. to Saltville in Washington Co.)

3/25/39-86 Teay's Valley & Hannansville Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5..... 8,000
(From point on Kanawha Tpke near Hurricane Bridge to Hannansville in Cabell Co.)

1/19/48-207 Thornton's Gap Tpke Co., Ineptd., $75,000, and B. P. W. for 3/5..... 45,000
(Rappahannock Co. to Culpepper Co.)

2/19/51-95 Capital increased by $10,000, and B. P. W. for 3/5 6,000

3/ 1/33-94 Thornton's Gap & Warrenton Tpke Co., Ineptd., $30,000, and B. P. W. for 2/5..... 12,000
(Fauquier Co. to Culpeper Co.)

3/12/31-208 Thoroughfare Gap Tpke Co. Capital reduced to $45,000, and B. P. W. for 2/5.
(Salem in Fauquier Co. made the western terminus of the road.)

2/13/33-100 Capital reduced to $31,000, and B. P. W. for 2/5 of reduced capital instead of as above..... 12,400

3/ 1/60-279 Tom's Creek & White's Creek Tpke Co., Ineptd., $3,000, and B. P. W. for 3/5..... 1,800
(From Tom's Cr. in Wayne Co. to mouth of White's Creek on Big Sandy River.)

3/ 1/56- 65 Tye River & Blue Ridge Tpke Co. B. P. W. for 50 shares. (Incorporating act 3/11/1819-133 does not show par value.)
(From point near Greensville over Blue Ridge Mountains to Tye Riv. in Nelson Co.)

3/22/51-84	Union Hall Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5	9,000
	Increase allaowed by $3,000, of which B. P. W. for 3/5	1,800
	(Bedford Co. to Franklin Co.)	
3/30/53-207	Upperville & Manassa Gap Plank Road Co. B. P. W. for 3/5 of $12,000	7,200
	(Fauquier Co. to Manassa Gap R. R.)	
3/ 3/34-171	Valley Tpke Co., Ineptd., $250,000, and B. P. W. for 2/5.	
	From Winchester in Frederick Co. to Harrisonburg in Rockingham Co.)	
3/34/38-129	Same; incorporated and B. P. W. for 3/5	180,000
2/14/39-89	Capital increased by addition of not over $75,000, and B. P. W. for 3/5	45,000
2/12/41-111	Capital increased by $25,000, and B. P. W. for 3/5	15,000
	and B. P. W. to lend to—(6% scrip) secured by lien	25,000
2/15/45-68	State guarantees loan of—to extent of	21,000
1/31/48-212	Capital increased by 1,000 shares; converts State's loan (above) of $25,000 into stock	25,000
4/ 3/38-122	Walker's Creek Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5	6,000
	(Smyth Co. to Giles Co.)	
2/15/54-46	Walnut Gap Road Co., Ineptd., $3,000, and B. P. W. for 3/5, and also for 3/5 of increase of $2,000 allowed by this act	3,000
	(Wyoming Co. to Boone Co.)	
3/ 2/31-207	Warm Springs & Harrisonburg Tpke Co. Capital reduced to $30,000, and B. P. W. for 2/5,	12,000
	(From east side of Warm Springs Mountain to Harrisonburg in Rockingham Co.)	
3 26/53-209	Capital increased by $15,000, and B. P. W. for so much as will make State's subscription 3/5 of whole	15,000

3/26/53-209	Capital increased by $15,000, and B. P. W. for so much as will make State's subscription 3/5 of whole.....	15,000
3/16/49-118	Warrenton & Rappahannock Tpke Co., Incptd, $20,000, and B.P. W. for 3/5..... (From War. in Fauquier Co. to point on Rappahannock River.)	12,000
3/18/50-83	Repeals section of above act authorizing State's subscription, but this act authorizes for 3/5.	
4/10/39- 87	Waynesborough & Greensville Tpke Co., Incptd., $6,000, with privilege of increasing to $10,000, and B. P. W. for 2/5..... (Augusta Co.)	4,000
3/15/49-135	Wellsburg & Bethany Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... (From Wellsburg in Brooke Co. to point near Bethany in same Co.)	9,000
3/14/50-101	Capital increased by $12,000, and B. P. W. for 3/5.....	7,200
2/ 4/23-81	Wellsburg & Washington Tpke Co. B. P. W. for $5,000 of the stock of..... (From Wellsburg in Brooke Co. to Washington in Pennsylvania.)	5,000
3/23/31-205	B. P. W. for $2,133.33 more.....	2,133.33
3/ 7/50-98	West Milford & New Salem Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... (Harrison Co. to Lewis Co.)	7,200
3/17/51-119	Capital increased by $6,000 for branch to Clarksburg in Harrison Co., and B. P. W. for 3/5.....	3,600
3/26/60-293	Capital increased by $5,000, and B. P. W. for 3/5.....	3,000

2/24/60-281 Jane Lew & Upshur Tpke Co., incorporated to take over such part of this road as lies in Lewis & Upshur Counties.

3/ 9/48-218 Weston & Fairmont Tpke Co., Incptd., $16,000, and B. P. W. for 3/5..... 9,600
(From Weston in Lewis Co. by Clarksburg in Harrison Co. to Fairmont in Marion Co.)

3/15/49-129 Capital increased to $20,000, and B. P. W. for 3/5..... 2,400

2/17/53-193 B. P. W. for macadamizing and planking—to subscribe not over..... 46,000

3/ 1/54- 46 B. P. W. for additional subscription for bridges and macadamizing..... 40,000

3/25/48-217 Weston & Gauley Bridge Tpke Co., Incptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Weston in Lewis Co. by Braxton Co. and Nicholas Co. to point on Great Kanawha in Fayette Co.)

3/11/50-97 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000

2/25/53-194 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000
and B. P. W., for improvement of road, to subscribe also for additional stock not exceeding $30,000..... 30,000

2/17/51-114 Weston & West Union Tpke Co., Incptd., $14,000, and B. P. W. for 3/5..... 8,400
(From Weston in Lewis Co. to W. Union in Doddridge Co.)

2/24/51-114 West Union Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From W. Union in Doddridge Co. by way of Centreville to point on Sistersville & Salem Road.)

2/25/54-45 West Union Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(Marshall Co.)

Marshall County Road to Fish Creek. Co. incorporated to grade and widen.
See Wheeling & Marshall Tpke Co.

3/20/47-121 Wheeling, West Liberty & Bethany Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5.
(From point in Ohio Co. by way of W. Liberty in same Co. and Bethany in Brooke Co. to the Pennsylvania line.)

2/29/48-224 Capital increased to $35,000, and B. P. W. for 3/5 of whole instead of as in act next above... 21,000

3/ 8/34-166 White & Salt Sulphur Springs Tpke Co. B. P. W. for 80 shares of—(Acts 1/8/34-165 shows cap. $10,000, par val. $50)..... 4,000
(From White Sulph. Springs in Greenbrier Co. to Salt Sulph. Springs in Monroe Co.)

3/15/49-135 Williamsport Tpke Co., Ineptd., $5,000, and B. P. W. for 3/5..... 3,000
(From Williamsport in Wood Co. to point on Parkersburg Road east of Parkersburg.)

2/18/51-118 Capital increased by $5,000, and B. P. W. for 3/5..... 3,000

4/ 7/58-97 State's interest in—released to Wood Co.

3/ 8/53-196 Wilson Creek & South Fork Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5..... 9,000
(From Grayson Co. to Smyth Co.)

3/21/60-305 Capital increased by $10,000, and B. P. W. for 3/5 6,000

4/ 8/39- 90 Winchester & Berkeley Springs Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5..... 8,000
(From Winchester in Frederick Co. to point on C. & O. Canan near Bath in Morgan Co.)

4/ 6/39- 91 Winchester & Berry's Ferry Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5.
(From Winchester in Frederick Co. to Berry's Ferry on Shenandoah River.)

1/21/48-211 Revives above act and changes State's subscription from $6,000 to $10,000, and increases capital to $25,000.

1/30/50- 87 Changes State's subscription to 3/5..... 15,000

1/23/54- 53 Capital increased by $6,000, and B. P. W. for 3/5 3,600

2/23/21- 98 Winchester & Frankfort Tpke Co., B. P. W. for 2/5 (Act 2/15/20-62 shows $200,000)..... 80,000
(From Winchester in Frederick Co. by way of Frankfort in Hampshire Co. to N. Branch of Potomac River.)

2/23/21- 98 Winchester & Romney Tpke Co., B. P. W. for 2/5 (Act 2/15/20-62 shows capital of $150,000). 60,000
(From Winchester in Frederick Co. to Romney in Hampshire Co.)

4/ 2/53-223 Winfield & Thompsonville Tpke Co., Ineptd., $7,500, and B. P. W. for 3/5.
(From Winfield in Putnam Co. by Hurricane Bridge, etc., to Wilson's Creek and Kanawha Road.)

3/12/56-141 Capital reduced to $6,000..... 3,600

3/29/53-216 Wolf Creek Tpke Co., B. P. W. for 3/5 of $15,000 9,000
(From mouth of Wolf Creek in Giles Co. up valley of said Creek to point in Tazewell Co.)

3/12/53-202 Wytheville Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5 6,000
(Wythe Co.)

3/21/53-206 Wytheville & Grayson Tpke Co., B. P. W. for 3/5 of $20,000 12,000
(Wythe Co. to Grayson Co. and branch to Carroll Co.)

3/26/53-208 Yellow Sulphur Springs Tpke Co., Ineptd., $3,000, and B. P. W. for 3/5..... 1,800
(Montgomery Co.)

2/27/54- 48 Capital increased by $600, and B. P. W. for 3/5 360

ROADS.

2/19/50- 68	Abb's Valley & Tug Road, from Abb's Valley in Tazewell Co. to Thos. Cook's in Wyoming Co., B. P. W. to construct and may borrow therefor.	5,000
3/ 1/50- 68	Road from Abingdon in Washington Co. to Pattonsville in Scott Co., B. P. W. for 3/5 of cost of (cost not to exceed $15,000).....	9,000
3/11/50- 91	Road across Alleghany Mountains in Franklin and Floyd Counties, B. P. W. to pay towards—	
3/31/51-113	Repeals act next above and makes B. P. W. subscribe for stock of Blackwater Tpke Co., incorporated to build this road ..... See Blackwater Tpke Co.	
3/ 4/34-105	Road across Alleghany Mountains in Pendleton and Pocahontas Counties, State appropriation for	6,000
3/13/49- 92	Alleghany & Huntersville Tpke Road from point on Jackson's River Tpke in Alleghany Co. to Warm Springs & Huntersville Tpke in Bath Co., to be built by B. P. W., appropriation of..	5,000
2/ 1/50- 59	B. P. W. to borrow the further sum for—of..	600
3/31/51-109	B. P. W. to appropriate to—for extension to Covington, the further sum of.....	4,500
3/22/53- 71	B. P. W. to appropriate to—for completion of—to Covington	1,500
1/19/34-158	Road from Bath Co. to Chimney Run above Warm Springs, State appropriation for opening.	1,600
3/ 8/47- 92	Road from Bath in Morgan Co. to mouth of St. John's River on Potomac Riv., B. P. W. to contribute	2,500
3/14/36- 73	Tpke Road from Beverly in Randolph Co. to Clarksburg in Harrison Co., B. P. W. to contribute	8,000

2/14/48-174	Beverly and Fairmont Road, from Beverly in Randolph Co. by Philippi and Pruntytown to Fairmont in Marion Co., B. P. W. to build—and may borrow	24,000
2/ 2/50- 60	Further sum appropriated to—	18,000
2/ 2/50- 60	Further sum to—for continuing road from Fairmont by Barracksville and Bassetteville and Paw Paw City to Warren in Monongalia Co., thence through Monongalia, Wetzel, Marshall and Ohio Counties to Wheeling	25,800
2/23/53- 70	Further appropriation to for completion of bridges	9,000
2/10/53- 71	Further sum to be spent on by B. P. W. for completion to Warren in Monongalia Co.	30,000
2/15/54- 47	Further sum to	1,500
3/ 6/51- 89	Black Lick & Plaster Banks Tpke Road, from Wythe Co. to Plaster Bks in Smythe Co., B. P. W. for 3/5 of $16,000 for	9,000
3/15/49- 93	Road from Eastern base of Blue Ridge in Madison Co. to Western base in Page Co., State appropriation for	1,500
2/11/53- 76	Above appropriation transferred to Blue Ridge Tpke Co. See Blue Ridge Tpke Co.	
2/25/36- 69	Road across Blue Ridge at Milan's Gap, State appropriation for—	800
4/ 5/38- 96	Road across Blue Ridge from Port Republic to Harris Mills in Albemarle Co., State appropriation to—	1,000
2/ 2/50- 59	Road across Blue Ridge from Rappahannock Co. to Warren Co., B. P. W. to construct and may borrow for	1,500
4/ 7/38- 99	Road from Brandenville in Preston Co. by Kingwood to a point on N. W. Tpke near Evansville in Preston Co., State appropriation for	10,000

2/16/47- 91	Capital increased by $15,000, of which the State subscribes for 2/5	6,000
1/15/48-254	$4,000 of the appropriation next above to go to Cheat River Toll Bridge Co. (See Cheat River Toll Bridge Co.)	
3/ 8/49-127	$2,000 more of the above appropriation to go to Cheat River Toll Bridge Co. (See Cheat River Toll Bridge Co.)	
3/21/51-116	Capital increased by $10,000, and B. P. W. for 3/5	6,000
3/ 5/33- 97	Road across Cheat Mountains in Randolph Co. from Tygart's Valley River to Greenbrier Riv., State appropriation for	6,000
2/ 7/32- 88	Cumberland Road--State to take over—whenever U. S. Government shall surrender so much thereof as lies in Virginia.	
	Fishing Creek, Morgantown & Brandonville. Road. (See Ohio River & Maryland Road.)	
2/25/50- 62	Floyd Court House and Hillsville Tpke Road, from Court House of Floyd Co. to Hillsville in Carroll Co., B. P. W. to construct	9,000
3/ 8/51- 88	Further sums appropriated to—for extension into Floyd Co. and bridge in Carroll Co.....	4,500 6,000
3/ 1/53- 72	Further appropriation for extension into Grayson Co.	10,000
3/ 9/53- 72	Further appropriation to— ..... and B. P. W. authorized to purchase from Rocky Mount Tpke Co. the mountain section of its road and to widen same as recommended by the Engineer & Supt. of Floyd C. H. & Hillsville Road, at cost not over.....	1,500 4,500
3/13/58- 97	Transfers the parts of—in Floyd and Carroll Counties to said Counties.	

2/14/53- 77	Road from Franklin in Pendleton Co. to Monterey in Highland Co. B. P. W. to construct and may borrow for	14,000
4/ 8/39- 63	Road from Guest's Station to Tennessee line, State appropriation to	6,000
3/ 2/46- 77	Road from Guyandotte River in Logan Co. to point on Kanawha River near Charleston, State appropriation to—	3,000
2/ 2/50- 63	Extends road to Logan C. H. and further State appropriation to	5,000
3/12/49- 94	Road from Harrisonburg in Rockingham Co. to Franklin in Pendleton Co., State appropriation account of	667
3/12/49- 94	Road from Harrisonburg in Rockingham Co. to Moorfield in Hardy Co., State appropriation account of	333
3/10/36- 71	Road from Huntersville in Pocahontas Co. to Parkersburg in Wood Co., State appropriation for Eastern section of	3,000
2/19/40- 62	Further appropriation to	1,000
2/25/50- 59	Huntonsville & Huntersville Road, from Hut. in Randolph Co. by way of Concord in same Co. to Hun. in Pocahontas Co. B. P. W. to construct	15,000
2/28/53- 70	B. P. W. for further sum for extension and completion of—and bridge in Pocahontas Co...	8,000
2/ 8/53- 70	B. P. W. further sum for completion	7,500
3/22/53- 71	B. P. W. further sum for extension into Greenbrier Co. to Lewisburg	20,000
3/30/37- 86	Road from Ice's Ferry on Cheat River in Monongalia Co. to Pennsylvania line in direction of Monroe, B. P. W. to pay for—and may borrow up to	4,200

3/ 9/53-199	Road from Jacksonville & Cove Spring Tpke in Floyd Co. across Alleghany Mountains and down South Fork of Roanoke Riv. to Va. and Tenn. line in Montgomery Co., B. P. W. to open and construct, and to spend on.....	2,500
3/26/31-159	Road from lower end of James River Canal at the mountain section to point near North River at upper end, State appropriation for construction of	9,000
3/ 7/48-178	Little Stone Gap Road, from head of Powell's Valley in Lee Co. to nearest and best point on Pound Gap Road, State appropriation for.....	3,000
3/17/49- 95	State appropriation for completion of...	650
3/17/49- 88	Road from Logan Court House at Shannon's house by best route to the Bluffs between Logan and Mercer Counties, State appropriation for	2,000
2/ 7/50- 64	Extension of road from Bluffs to Cumberland Gap Tpke in Giles Co., and State appropriation to	2,000
3/ 4/51-112	Road to start from Wyoming Court House instead of from Shannon's house,, and B. P. W. for additional appropriation for completion....	3,000
3/23/31-161	Road from Middlebourn, on Middle Island Creek in Tyler Co. to point in Green Co. of Pennsylvania, State appropriation for.....	5,000
2/19/34-109	Additional State appropriation	1,000
2/28/54- 54	Middle Fork Tpke Co., from Randolph Co. to Point in Barbour Co., B. P. W. to construct—and may borrow for same	15,000
3/19/32-166	Road from Monroe Co. line to Kentucky line in Cabell Co., State appropriation for.....	5,000
	Morgantown & Beverly Road. (See Road from Penn. line by Morgantown. etc.)	

3/21/37- 88	Road from Nicholas Court House to Gauley Bridge on line of Kanawha Tpke, State appropriation for—	1,500
1/17/48-177	Road from N. C. line through Carroll Co. to Valley Road near Wytheville, State appropriation for completing—	2,000
3/19/31-153	Northwestern Tpke Road, from Winchester in Frederick Co. to point on Ohio River. The Governor, Treasurer, Atty. General, and Second Auditor of the State incorporated as—for purpose of building and maintaining this road; and empowered to borrow on credit of State at 6%.	125,000
2/ 6/34-104	Authorized to borrow on credit of State	86,000
3/ 1/34-105	To subscribe not over $8,000 to Northwestern Road of Maryland	8,000
3/30/37- 82	Authorized to borrow on credit of State	50,000
3/29/37- 82	Authorized to borrow on credit of State for macadamizing and widening parts of between Winchester and Lockharts	15,000
4/ 9/38- 99	Authorized to borrow on credit of State	28,000
1/26/39- 70	Authorized to make temporary loan for amount necessary to rebuild bridge over South Branch of Potomac River.	
1/ 5/40- 61	Amends act next above; allows loan to be made through B. P. W. instead of being a temporary loan, amount not to exceed	11,484
3/14/40- 61	Authorized to borrow on credit of State	7,000
1/29/44- 66	B. P. W. to pay a claim against—	2,130.97
2/29/48-173	B. P. W. to macadamize certain parts of from Taylor Co. to Parkersburg and may borrow for same not $30,000 a year for two years	60,000
3/17/49- 91	B. P. W. to spend on for macadamizing the further sum of	60,000

2/15/36- 76	Road from Ohio River at mouth of Fishing Creek in Tyler Co. by Morgantown in Monongalia Co. and Brandonville in direction of Smithfield in Jefferson Co., State appropriation to—through B. P. W. which is to borrow and pay	12,000
2/14/38-101	B. P. W. to lend to—for completion of to be secured by mortgage	12,000
3/30/39- 69	State appropriation toward completion of—..	12,500
1/13/48-175	B. P. W. to foreclose mortgage on—securing State loan, and authorized to bid it in at sale for any amount not over the mortgage, and if B. P. W. bid it in then State appropriation to—for completion	15,000
2/ 4/50- 60	B. P. W. to borrow and spend on—for completing and repairing	30,000
2/10/53- 72	B. P. W. to borrow and spend on for bridges over Buffalo, Pile's Fork, and Little Fishing Creek	22,000
	and the further sum for planking and macadamizing	6,000
3/30/37- 85	Road from Pennsylvania line in Monongalia Co. by Morgantown in same Co. to point on N. W. Road West of Cheat River, State appropriation for.	
4/ 9/38-100	This appropriation increased to $12,000.....	12,000
3/39/48-176	Further appropriation to	3,000
3/ 1/53-195	Capital increased by $8,000 for finishing and repairing road, and B. P. W. for 3/5.....	4,800
3/25/37- 93	Road from Pound Gap of Cumberland Mountain on Kentucky line to intersect Fineastle & Cumberland Gap Road in Russell Co., State appropriation for	5,000

3/ 5/34-106	Price's Tpke and Cumberland Gap Road from Price's Turnpike in Botetourt Co. by way of valley of East River or up Wolf Creek to Cumberland Gap on dividing line between Va., Tenn. & Ky. To be built by County Courts and B. P. W. B. P. W. for 2/5 of $100,000. Raised to 3/5 or $60,000 by Act Mar. 21, 1837.....	40,000
4/ 2/39- 63	B. P. W. to appropriate to..... (See act 2/28/42-71 declaring this $3,600 to be in addition to State's subscription.)	3,600
3/ 8/42- 72	B. P. W. to borrow to pay towards construction of that part of—which passes through Mercer Co.	4,000
1/29/44- 67	B. P. W. to pay 3/5 of amount ($8,416.67) due on construction of that part of—passing through Counties of Lee, Scott, Russell, Tazewell & Giles	5,050
3/21/51-110	Princeton & Red Sulphur Road, in Mercer and Monroe Counties. Made a free road, and State's subscription to Princeton & Red Sulphur Tpke Co. ($4,200) an appropriation to this free road.. (See Princeton & Red Sulphur Tpke Co.)	4,200
2/19/50- 65	Pulaski & Giles Tpke. To be constructed; B. P. W. for 3/5 of estimated cost (cost not to exceed $10,000)	6,000
3/ 3/54- 48	Capital increased by $3,000, and B. P. W. for 3/5	1,800
3/28/53-212	(See Pulaski & Giles Tpke Co.)	
2/ 4/50- 65	Raleigh & North Carolina Road. From Raleigh Co. by way of Princeton in Mercer Co., Wytheville in Wythe Co., Grayson C. H. to N. C. line in direction of Jefferson in Ashe Co., N. C. B. P. W. for 3/5 of cost of (cost not to exceed $44,000)	26,400
2 25/53-194	B. P. W. for 3/5 of additional $20,000.....	12,000

3/17/56-143 Incorporates Raleigh & Tazewell Line Tpke Co. to construct part of this road. This Co. to receive proportional share of unapplied portion of State's subscription to this road.
(See Raleigh & Tazewell Line Tpke Co.)

3/ 3/60-280 Changes name of above Co. to Raleigh & Wythe Line Tpke Co.
(See Raleigh & Wythe Line Tpke Co.)

3/ 8/47- 89 Tpke Road from Richlands in Tazewell Co. down Louisa Fork of Sandy River to Ky. State line. B. P. W. to construct and may borrow therefor not over 10,000

1/17/48-178 State appropriation for completing 6,500

3/ 7/49- 96 State appropriation for 2,500

1/30/50- 63 State appropriation for road connecting this road with Tazewell C. H. & Fancy Gap road.... 8,000

3/ 2/53- 72 State appropriation for completing Richlands & Ky. line Tpke Road..... 3,000

2/16/53- 77 B. P. W. to appropriate, for completing the connecting road provided for by 1/30/50-63 (the second above) 2,000

3/12/49- 90 Road from Forks of Sandy River in Wayne Co. to Kanawha Tpke in Cabell Co., State appropriation for 3,500

3/19/50- 70 Graded Road in Scott Co. B. P. W. for 3/5 of $6,000 for 3,600

3/31/37- 83 Road from Sistersville in Tyler Co. by Middlebourn to the N. W. Tpke Road near Salem in Harrison Co. State appropriation to—of not over 6,000

2/ 1/47- 90 State appropriation for 6,000

3/30/48-220 Further State appropriation for completing.

2/ 9/49- 91 State appropriation for completing. This to be in lieu of the $2,500 by act next above..... 5,000
(See Sistersville & Salem Tpke Co.)

3/12/34-160 Road from Skidmore's Fork in Rockingham Co. to South Fork in Pendleton Co., State appropriation towards 1,000

2/12/53- 75 Road from Slavins Cabin on West side of Greenbrier River on Staunton & Parkersburg Road to Summerville in Nicholas Co., by way of Point Mountain and Fork Lick. B. P. W. to construct and may borrow therefor..... 25,000

3/23/60-294 Further appropriation to—by State for completing and for extension from Nicholas Co. to Hunstonsville & Huntersville Tpke 12,000

3/30/38- 95 Road from Smyth Court House to Plaster Banks in Rich Valley across Walker's Mountain, State appropriation for..... 3,000

2/ 9/50- 63 Further appropriation for completion..... 1,500

2/ 7/50- 64 Road from South Fork in Hardy Co. to Brock's Gap in Rockingham Co. B. P. W. to spend on 1,400

2/ 7/50- 64 Road from South Fork of S. Branch of Potomac near Brakes to Petersburg in Hardy Co. State appropriation for 900

1/28/46- 79 Southwestern Tpke Road (in Roanoke, Montgomery, Pulaski, Wythe, Smyth and Washington Counties) B. P. W. incorporated as—and may draw on State Treasury for..... 75,000
Also authorized on certain conditions to purchase the stocks of Salem & Pepper's Ferry Tpke Co., Lafayette & Ingles Tpke Co., and Alleghany Tpke Co.

1/12/47- 85 State appropriation towards construction.... 75,000

1/17/48-176 State appropriation for completion 300,000

1/24/48-177 State appropriation for extension from Eastern terminus to Buchanan in Botetourt Co..... 90,000

3/19/50- 62 B. P. W. to borrow for completion of between Salem and Buchanan 8,000

3/16/38- 97 Staunton & Parkersburg Tpke Road. From Staunton in Augusta Co. to Parkersburg in Wood Co. B. P. W. directed to construct and allowed to borrow therefor not exceeding..... 150,000

2/19/45- 68 B. P. W. to borrow for that part of between Weston in Lewis Co. and Beverly in Randolph Co. 30,000

3/ 5/46- 75 B. P. W. to erect bridge over Valley River in Randolph Co. and appropriation for this purpose of 5,000

3/13/47- 85 B. P. W. to build certain bridges in Randolph Co., Lewis Co., over N. & S. Fork of Hughes River, over Stone Creek and other creeks, and appropriation for this purpose 15,000

2/ 2/48-174 Additional $10,000 for bridges 10,000

3/12/49- 92 B. P. W. to macadamize parts of and may borrow therefor 60,000

2/ 7/50- 59 B. P. W. to build bridge over Polk Creek and may spend therefor 800

3/ 1/53- 70 B. P. W. to spend on for macadamizing, planking and bridging 100,000
Not over $25,000 of this in any one year.

4/ 7/58-138 B. P. W. to build open bridge over File's Creek in Randolph Co. on line of this road and pay for same out of the appropriations made by act of 3/1/53-70 (next above).

3/30/60-304 B. P. W. to use $12,000 of the unexpended money heretofore appropriated to—for repairs in several Counties that are necessary, and for changing location of road in Wood Co.

3/17/49- 96 Tazewell Court House & Fancy Gap Tpke Road. From Tazewell C. H. by Wytheville in Wythe Co. and Hillsville in Carroll Co. to N. C. line at Fancy Gap. B. P. W. for 3/5 of $32,000 for 19,200

1/30/50- 63 State appropriation for road connecting this road with Richlands and Ky. line Road.
(See Richlands & Ky. Line Road.)

3/ 8/51- 91 Amount to be spent on Tazewell C. H. & Fancy Gap Road increased by $15,000, of which B. P. W. 3/5 9,000

2/16/53- 77 Further appropriation for the connecting road mentioned in second act above.
(See Richlands & Ky. Line Road.)

2/11/53-190 B. P. W. for 3/5 of additional $25,000..... 15,000

1/15/23- 81 Road from Virginia and Kentucky dividing line on Louisa Fork of Sandy River, by way of Prestonburg to Clinch River. State appropriation for opening 3,000

1/19/36- 79 Road between Weston in Lewis Co. and Charleston in Kanawha Co. State appropriation for 6,000

3/25/42- 69 B. P. W. to see to construction of—by appointing a commissioner who is to draw warrants on State Auditor 1,500

1/30/50- 93 Road from mouth of Wilson's Creek in Wayne Co. to Cabell Co. and thence to Kanawha Tpke. State appropriation for 4,000

3/31/53-220 Additional subscription by B. P. W..... 3,000

3/15/58-101 Confirms act next above.

CANALS, NAVIGATION COMPANIES.

3/ 1/47- 93 Alexandria Canal Co. B. P. W. to buy 2/5 of stock of, and State bonds to issue therefor (2,720 shares at $100) 272,000

4/ 4/48-168 State guarantees bonds of—to am't not exceeding 43,520

2/20/33-59	Chesapeake & Ohio Canal Co. State Treasurer to subscribe for 2,500 shares of stock of—and to issue State certificates therefor..... (Act 1/27/24-41 shows capital $6,000,000 par value $100.)	250,000
3/ 8/47-92	State guarantees bonds of—to extent of $300,000, to be endorsed on bonds.....	300,000
3/15/49-81	State guarantees bonds of—not exceeding $200,000	200,000
3/22/53-65	B. P. W. to pay interest on bonds of—guaranteed by State and may borrow therefor.....	24,315
3/24/53-65	Amount in act next above increased by $276.78	276.78
2/22/53-34	B. P. W. to pay $15,450 interest on bonds of—guaranteed by State to 7/1/53 and $15,000 interest to 1/1/54.....	30,450
2/13/56-85	State pays interest due and to become due on bonds of—guaranteed by State (7 installments of $15,000 each, interest July 54 to July 57 inclus.....	105,000
12/23/57- 16	Second Auditor to pay interest bonds of guaranteed by State to 1/1/58, 7/1/58, 1/1/59 and 7/1/59 of $15,000 each.....	60,000
3/17/49-149	Coal River Navigation Co., Inceptd. For improvement of navigation of Big Coal River from its mouth in Kanawha Co. to Boone & Fayette Counties, and Little Coal Riv. to Boone C. H. Capital $10,000, and B. P. W. for 3/5.....	6,000
3/ 9/53-168	Capital increased by $50,000, and B. P. W. for 3/5.....	30,000
3/17/56-86	Capital increased by $100,000, and B. P. W. for 3/5.....	60,000
2/27/54-55	Craig's Creek Navigation Co., Inceptd. (Craig Co.) Capital $50,000, and B. P. W. for 3/5...	30,000

3/ 2/21-55	Dismal Swamp Canal Co. B. P. W. to lend to—$50,000	50,000
2/26/24-56	B. P. W. to lend to—to be secured by mortgage	37,500
2/17/37/131	Capital increased to 1,944 shares and B. P. W. for such amount of as will increase State's stock to shares of whole, and may borrow therefor.	
4/ 3/38-142	Dragon Swamp Navigation Co., Ineptd., $5,000, and B. P. W. for 2/5	2,000
4/ 5/38/151	Goose Creek & Little River Navigation Co. B. P. W. for 2/5. (Act 4/14/36-226 shows cap. $60,000).	
3/27/48-234	Makes B. P. W.'s subscription 3/5 of whole capital of $100,000	60,000
3/16/49-148	Guyandotte Navigation Co., Ineptd., $75,000, and B. P. W. for 3/5 For improvement of Guyandotte River from its mouth in Cabell Co. to Logan C. H.	45,000
3/ 4/51-76	Capital increased by $125,000, and B. P. W. for 3/5 (If Co. does not accept provisions of this act, then Upper Guyandotte Nav. Co., Ineptd., with cap. of $125,000, and B. P. W. 3/5. See Upper Guyandotte Navigation Co.)	75,000
1/31/50-112	Hazel River Navigation Co., Ineptd., $75,000, and B. P. W. for 3/5 For improving navigation of Hazel Riv. from Rappahannock River to point in Culpeper Co.	45,000
3/22/51-75	Capital increased by $16,000, and B. P. W. for 3/5	9,600
3/30/53-171	Capital increased by $15,000, and B. P. W. for 3/5	9,000

4/ 9/39/98	Holston Navigation Co., Ineptd., $30,000, and B. P. W. for 2/5..... (Washington Co.)	12,000
3/23/60-113	Kanawha Board of Directors. For improvement of navigation of Kanawha River from the mouth of Loup Creek shoals. Issue to of $300,000 of State stock bearing 6 per cent. int.....	300,000
3/15/51-72	Kempsville Canan Co. Capital increased to $12,000, and B. P. W. for 3/5..... (Princess Anne Co.)	7,200
3/26/60-120	Capital increased by $30,000, and B. P. W. for 3/5.....	18,000
3/11/48-232	Little Kanawha Navigation Co. B. P. W. for 3/5 ($30,000). For improving navigation of Lit. Kan. Riv. from its mouth to point in Braxton Co.	
3/ 1/53-164	Revives and amends incorporating act (3/9/47-127) and incorporates with capital of $50,000, of which B. P. W. for 3/5.	
2/ 8/60-122	Revives and amends incorporating act. Capital $25,000, and B. P. W. for 3/5.....	15,000
2/24/27-72	Lower Appomattox Co. B. P. W. for 160 shares	16,000
3/28/51-72	Turns over to City of Petersburg State's interest in this Co. on payment by said city into State Treasury of $588.82.	
3/22/47-136	Mattaponi Navigation Co., Ineptd., $5,000, and B. P. W. for 2/5..... (King & Queen and King William Counties.)	2,000
3/ 8/48-226	Meherrin Navigation Co., Ineptd., $100,000, and B. P. W. for 2/5..... (Mecklenburg and Lunenburg Counties.)	40,000

3/10/47-125 Monongahela Navigation Co., Inceptd., $200,000, and B. P. W. for 600 shares for every 1,000 taken by others.
Navigation of M. River from Penn. line to Elk Creek in Harrison Co.

3/19/47-127 Supplementary to act next above. Additional capital of $100,000, for Cheat River in Monongalia Co., and B. P. W. for 2/5..... 40,000

3/7/49-147 Amends act of 3/10/47 (second above), changing par val. of shares and making B. P. W.'s subscription 3/5 of said capital.

4/7/58-133 Revives and amends acts of 3/10/47 and 3/7/49. In this act nothing is said about State subscription.

3/8/60-119 Revives and amends previous acts incorporating. Makes capital $80,000, and B. P. W. for 3/5..... 48,000

3/2/21-87 Monongalia Navigation Co. B. P. W. for 2/5 of $35,000..... 14,000
For navigation of Monongalia and West Fork Rivers.

3/27/37-135 New Shenandoah Co. B. P. W. for 2/5 of—($500,000) 200,000

1/24/48-233 B. P. W. for 2/5 of $500,000, new stock..... 200,000

2/2/50-111 North River Navigation Co., Inceptd., $100,000, and B. P. W. for 3/5..... 60,000
(Rockbridge Co.)

2/17/51-75 B. P. W. for $45,000, being 3/5 of additional capital by this act..... 45,000

3/15/53-168 Capital increased by $60,000, and B. P. W. for 3/5..... 36,000

3/16/58-93 To be taken over by James Riv. & Kanawha Co.

2/20/34-111 Nottoway Navigation Co., Inceptd., $30,000, and B. P. W. for 2/5..... 12,000
(Nottoway River.)

3/27/37-94	Potomac River—for improvement of South Branch of—in Hardy Co. State appropriation.	2,000
1/21/28-78	Rappahannock Co. B. P. W. for 2/5 of $50,000 of stock of.....	20,000
1/15/29-60	B. P. W. for 2/5 of additional $20,000 of stock.	8,000
2/23/30-87	B. P. W. for 2/5 of $30,000 additional stock...	12,000
3/31/31-207	B. P. W. for 2/5 of additional $15,000 of stock	6,000
3/ 4/36-224	Authorizes B. P. W. to pay out as an advance on State stock in—not over $75 per share, or to sell State stock for $25 a share, or both, or if neither of these, then to turn said stock over to the Co.	
3/ 1/38-149	B. P. W. to borrow money to pay its subscriptions to—	
12/13/45-97	Surrenders State stock in—	
2/ 3/48-236	State Treasurer to issue State certificates to—for construction of its work, to amount not over $100,000, to be secured by mortgage.....	100,000
2/25/53-166	B. P. W. directed to foreclose mortgage of State, and purchase money converted into stock, to which State subscribes for amount due it.	
3/ 2/21-56	Richmond Dock Co. B. P. W. to pay further sum of $12,500 on its subscription to stock of...	12,500
3/13/23-67	B. P. W. to lend to—375 shares of stock in Bank of Virginia, and also $12,500, to be secured by lien.	
4/ 7/31-246	Rivanna Navigation Co. B. P. W. for 600 shares of— (Act 3/2/27/58 shows $100,000, par val. $50.)..... (Albemarle and Fluvanna Counties.)	30,000
3/27/37-134	B. P. W. for 200 shares, making with former amount 2/5 of whole.....	10,000

4/ 8/39-98	Capital increased by $40,000, making whole $160,000, and B. P. W. for 2/5 of increase, also for 2/5 of the increase of $20,000 by act 4/41/38-149.....	24,000
2/15/51-73	B. P. W.'s subscription to such amount as will make 3/5 in all of the aggregate formed by said subscription added to the amount already subscribed by individuals and State; also for $20,000 of the increase by act 3/8/49-151.	
5/26/53-164	B. P. W. for $100,000 of stock of.....	100,000
2/ 9/60-121	B. P. W. for 1,200 shares at $50.....	60,000
4/ 2/39-96	Rockfish Navigation & Blue Ridge Tpke Co. (See under Turnpikes.)	
1/24/24-57	Slate River Co. (Buckingham Co.) B. P. W. for 69 shares of. (Act 1/29/19-68 shows par val. $100.).....	6,900
3/ 3/51-74	Slate River Co., Incorporated. B. P. W. for $21,000.....	21,000
3/24/48-231	Smith River Navigation Co., Incptd., $12,000, and B. P. W. for 3/5..... (Patrick Co.)	7,200
3/27/37-94	South Branch of Potomac River. (See Potomac River.)	
3/15/53-170	Tug Fork Navigation Co., Incptd., $8,400, and may increase to $15,000, and B. P. W. for 3/5.. (Tug Fork of Sandy River up to Logan Co.)	9,000
3/ 9/49-86	Twelve Pole River in Wayne Co. State appropriation for improving navigation of.....	1,800
3/ 1/53-167	Twelve Pole River Navigation Co., Incptd., $6,000, and B. P. W. for 3/5..... (Wayne Co.)	3,600
2/21/20-56	Upper Appomattox Co. B. P. W. for 150 shares at $100.....	15,000

2/28/37-133 B. P. W. for 277 shares of new stock of..... 27,700

1/25/39-101 Capital increased to $120,000, and B. P. W. for enough to make its subscription 2/5 of whole.. 5,300

3/ 4/51-76 Upper Guyandotte Navigation Co. This Co. to be incorporated with capital of $125,000, of which B. P. W. subscribes 3/5, in the event the Guyandotte Navigation Co. does not accept provisions of this act increasing its capital by $125,000..... 75,000

(See Guyandotte Navigation Co.)

RAILROAD COMPANIES.

3/15/53-148 Alexandria, Loudoun & Hampshire R. R. Co., Ineptd. Amends acts relating to Alexandria & Harper's Ferry R. R. Co., which name is changed to this. B. P. W. for 3/5 of $1,200,000 .... $720,000

(From point at or near Leesburg in Loudoun Co. through Clark's Gap and by most eligible route through Bloomery Gap in Hampshire Co. to Paddytown in Hampshire Co.)

Authorized to purchase or unite with Winchester & Potomac R. R. Co.

2/15/54-40 Authorized to extend the road to point in Hampshire Co. west of Paddytown.

2/26/56-110 Provides that not more than $120,000 shall be expended in construction and equipment of the road west of Shenandoah River.

3/25/58-89 B. P. W. for 3/5 of $500,000..... 300,000

3/28/37-129 Baltimore & Ohio R. R. Co. B. P. W. for $302,100.

4/ 2/38-113 B. P. W. subscription.

3/ 6/47-86 Repeals State's subscriptions to—under above acts.

3/20/48-179 State guarantees bonds of City of Wheeling to amount of $500,000 to pay said city's subscription to B. & O. R. R. Co., to be secured by mortgage from said city.

2/22/60-264 B. & O. R. R. Co. and N. W. Va. R. R. Co. authorized to be consolidated under name of B. & O. R. R. Co.

3/ 5/49-99 Blue Ridge R. R. Co. B. P. W. incorporated as— Not to contract for more than $100,000 in any one year and may borrow same on credit of State. Louisa R. R. Co. may take over this R. R. by paying for same out of its tolls.

Increases capital of Louisa R. R. Co. $150,000, and B. P. W. for same proportion as act 3/8/47 (3/5) for road from Staunton. If Louisa R. R. Co. does not accept provisions of this act, then Blue Ridge R. R. Co. stock to be issued ($150,000) for the road to Staunton and B. P. W. for 3/5..... 90,000

3/ 3/52-125 Amends above provision as to borrowing on credit of State so as to allow borrowing of not over $150,000 by July 1/52, $150,000 by 1/1/53, $100,000 by 7/1/53 and $100,000 by 1/1/54..... 500,000

3/27/37-122 City Point R. R. Co. B. P. W. for 600 shares of— (Act 1/26/36-141 shows cap. $150,000, par val. $100.)..... 60,000

4/ 6/39-72 B. P. W. to lend to—to be secured by mortgage 50,000

3/25/43-71 Increases capital to $210,000. Increase to be subscribed for by B. P. W., provided does not exceed debt due State by the Co. with interest. This is an exchange of equivalent amount of stock for the debt and interest.

2/15/53-66	Covington & Ohio R. R. Co. B. P. W. incorporated as—for constructing a R. R. from point at or near Covington or Clifton Forge by best practicable route to point on Ohio River between mouth of Big Sandy and town of Point Pleasant. 3rd section of this act provides that B. P. W. shall commence at western terminus and work eastwardly at the same time they are working from the eastern terminus westwardly. B. P. W. authorized to borrow for—on credit of St.....	1,000,000
3/13/56-83	B. P. W. to borrow and appropriate to—to be expended within present and succeeding year, for tunneling, grading, masonry, bridges, etc.....	500,000
4/ 3/58-87	B. P. W. to borrow and appropriate to—to be expended in years 1858 and 1859..... Repeals 3rd section of act of 2/15/53-66.	800,000
2/29/60-107	B. P. W. to borrow for—$2,500,000, but not over $1,000,000 to be expended in any one year.....	2,500,000
3/ 3/60-113	Rail Road from point on Covington & Ohio R. R. near White Sulphur Springs in Greenbrier Co. to Grafton in Taylor Co. B. P. W. to have surveys made, and appropriation for that purpose of not over.....	4,000
3/21/50-55	Experimental R. R. in Richmond, between depots of R. & P. R. R. and R. & F. R. R., not over two miles long. B. P. W. to build, for which appropriation of.....	10,000
3/30/37-129	Falmouth & Alexandria R. R. Co. B. P. W. for 2/5 of stock of— (Act 3/9/35-89 shows capital $600,000.)	
3/30/38-111	Amends above act and changes State's subscription from 2/5 to 3/5.....	360,000

4/ 1/48-189 Fredericksburg & Blue Ridge R. R. Co., Ineptd. Provides that majority of stockholders of Swift Run Gap Tpke Co. may sell that road to—and if this is done State to be a stockholder in, to the extent of the value of its stock in Swift Run Tpke Co.

3/ 1/53/136 Fredericksburg & Gordonsville R. R. Co., Ineptd., $460,000, and B. P. W. for 3/5..... 276,000

3/ 8/53-140 Loudon Branch R. R. Co. To be incorporated on certain conditions.
See Manassa Gap R. R. Co.

2/25/37-125 Louisa R. R. Co. B. P. W. for 1,200 shares (2/5). (Act 2/18/36-168 shows cap. $300,000.)..... 120,000

3/27/38-110 Capital increased and B. P. W. for 3/5 of not over $200,000..... 120,000

3/ 8/47-103 Capital increased by $250,000, and B. P. W. for 3/5 150,000

3/24/48-187 Capital increased by $250,000, and B. P. W. for 2/5..... 100,000

3/ 5/49/99 Authorizes—to take over Blue Ridge R. R. Co. and increases capital $150,000 for road to Staunton, should it decide to build such road, and B. P. W. 3/5..... 90,000
(See Blue Ridge R. R. Co.)

1/30/50-51 Capital increased by $700,000 for extension to Covington, and B. P. W. for..... 420,000
Or, if stockholders fail to accept this, then new Co., to be called Staunton & Covington R. R. Co., to build the road and B. P. W. to subscribe this $420,000 to it.

2/ 2/50-52 Name changed to Virginia Central R. R. Co. and State guarantees its bonds to extent of $100,000.
(See Virginia Central R. R. Co.)

3/30/37-119	Lynchburg & Tennessee R. R. Co. B. P. W. for 2,000 shares. (Act 3/11/36-89 shows capital $2,500,000, par val. $100.)	200,000
3/ 6/49-101	Amends last incorporating act (3/24/48-184) and changes name to Virginia & Tennessee R. R. Co. (For subscription under this act see Va. & Tenn. R. R. Co.)	
2/10/51-69	Manassa's Gap R. R. Co. B. P. W. for 2/5 of $800,000	320,000
12/ 6/52-69	B. P. W. for $160,000 to make its subscription 3/5	160,000
2/ 7/53-69	Capital increased by $800,000, and B. P. W. for 3/5	480,000
3/ 8/53-140	Authorizes—to take over R. R. to be built from Snickersville, Middleburg, Purcellville or Waterford to Manassas Gap R. R. Capital necessary $300,000, & B. P. W. 3/5. If Man. Gap R. R. Co. fail to accept this act, then independent Co. incorporated as Loudon Branch R. R. Co.	180,000
3/10/53-158	Capital increased by $500,000, and B. P. W. for 3/5	300,000
1/25/54-35	Capital increased by $400,000, and B. P. W. for 3/5	240,000
3/25/58-88	Capital increased by $250,000. B. P. W. for all of it; to constitute preferred stock.	250,000
2/10/60-109	Capital increased by $350,000, and B. P. W. for all, to constitute a 6 per cent. preferred stock	350,000
3/12/53-139	New River R. R. Co. To be incorporated on certain conditions. (See Virginia & Tennessee R. R. Co.)	
2/ 9/53-137	Norfolk & Petersburg R. R. Co. B. P. W. for 4,800 shares (3/5)	480,000

2/13/54-34	Capital increased by $700,000, and B. P. W. for 3/5.....	420,000
3/25/58-88	B. P. W. for additional subscription of $300,000 in 6 per cent. State bonds.....	300,000
3/ 2/60-112	Capital increased by $300,000, and B. P. W. for all.....	300,000
3/27/48-191	Orange & Alexandria R. R. Co., Inceptd., $900,000, and B. P. W. for 2/5.	
3/ 6/49-107	State's subscription increased to 3/5.....	540,000
3/15/50-235	Resolution transferring claim of Va. against U. S. ($120,000) to this R. R., and when same recovered said R. R. to issue stock therefor to Literary Fund.	
3/ 7/51-66	Capital increased by $100,000, and B. P. W. for 3/5	60,000
2/ 9/53-69	Capital increased by $420,000, and B. P. W. for 3/5.....	252,000
3/25/58-87	B. P. W. to lend to—to be secured by mortgage	400,000
3/22/31-205	Petersburg R. R. Co. B. P. W. for 2/5 of $400,000 of stock of.....	160,000
2/27/32-163	Amends above, State's subscription to be payable in two installments.	
3/29/38-105	B. P. W. to lend to, borrowing for the purpose, and take mortgage to secure it.....	150,000
2/25/43- 71	Increases capital to $769,000. This increase to be subscribed for by B. P. W. provided said increase does not exceed the debt due State by said Co. with interest. This is an exchange of equivalent amount of stock for the debt and interest.	
4/ 2/58-142	Authorizes—to unite with Greensville & Roanoke R. R. Co. as Petersburg R. R. Co.	

1/30/34-149	Portsmouth & Roanoke R. R. Co. Increases capital to $475,000, and B. P. W. for 2/5....	190,000
3/14/37-115	B. P. W. for $50,000 of $150,000 increase..	50,000
3/31/38-103	B. P. W. to lend to—to be secured by mortgage	150,000
3/20/39- 71	Capital increased by $150,000 and B. P. W. for	16,650
3/25/43- 71	Increases capital to $817,850, to be subscribed for by B. P. W. This an exchange of equivalent amount of stock for the debt due State with interest.	
2/27/46- 90	Directs B. P. W. to sell—and incorporates the purchasers as Seaboard & Portsmouth R. R. Co.	
3/ 9/47-108	Richmond & Danville R. R. Co., Ineptd., $1,500,000, and B. P. W. for 3/5.....	900,000
3/15/50- 57	State guarantees bonds of—	200,000
3/20/51 -63	Capital increased by $500,000, and B. P. W. 3/5	300,000
2/ 9/53- 68	B. P. W. to lend to.....	600,000
2/10/60-107	B. P. W. for additional stock.....	350,000
1/23/35- 86	Richmond, Fredericksburg & Potomac R. R. Co. B. P. W. for 2/5 (Act 2/25/34-127 shows cap. $700,000)	
3/23/36-167	Amends above State's subscription changed to 48 shares less than 2/5, making it 2,752 shares	275,200
4/ 6/39- 76	Authorizes—to borrow on credit of State $250,000 on condition that it surrender its exemption from taxation	250,000

1/17/37-123	Richmond & Petersburg R. R. Co. B. P. W. for 2,000 shares (Act 3/14/36-146 shows capital $300,000 exclusive of B. P. W.'s subscription)	200,000
3/30/38-107	B. P. W. to lend to—to be secured by mortgage	150,000
3/25/43- 71	Capital increased to $685,600 to be subscribed by B. P. W. This an exchange of debt due State for an equivalent amount of stock.	
3/24/53-141	Authorizes—to convert its debts into stock at $50 per share. B. P. W. to have option of concerting all State's loans into this stock.	
1/31/53-135	Richmond & York River R. R. Co., Inceptd., $500,000 and B. P. W. for 3/5.....	300,000
3/25/58- 89	Capital increased by $200,000 and B. P. W. for all of it; to constitute preferred stock....	200,000
3/31/37-116	Roanoke & Danville Junction R. R. Co. B. P. W. for 2/5 (Act 3/10/36-113 shows $2,500,000)	800,000
3/ 4/51- 61	Roanoke Valley R. R. Co., Inceptd., $300,000 and B. P. W. for $100,000.	
3/10/53-137	B. P. W.'s subscription changed to 3/5 of $300,000	180,000
3/ 1/54- 35	Capital increased by $130,000 and B. P. W. for all	130,000
2/27/46- 90	Seaboard & Roanoke R. R. Co. B. P. W. directed to sell Portsmouth & Roanoke R. R. Co. and the purchasers thereof incorporated as Seab. & Roan. R. R. Co.	
2/20/51- 62	Southside R. R. Co. B. P. W. for 3/5 of $800,000	480,000
2/ 5/53- 65	B. P. W. to borrow money to lend to—....	800,000
4/ 6/39-77	Staunton & Charlottesville R. R. Co., Inceptd., $800,000, and B. P. W. for 2/5.....	320,000

1/30/50-51	Staunton & Covington R. R. Co. To be formed in certain event. (See Louisa R. R. Co., this act.)	
2/ 2/50-52	Virginia Central R. R. Co. Name of Louisa R. R. Co. changed to this. State guarantees bonds of..... (See Louisa R. R. Co.)	100,000
3/22/51-65	B. P. W.'s subscription made 3/5 of whole.	
12/15/52-66	Capital increased by $150,000, and B. P. W. for 3/5.....	90,000
3/22/53-67	Capital increased by $1,000,000; B. P. W. for 3/5.....	600,000
2/ 9/60-110	B. P. W. to lend to—.....	600,000
3/ 3/53-138	Virginia & Kentucky R. R. Co. To be formed in certain event. (See Va. & Tenn. R. R. Co.)	
3/ 6/49-101	Virginia & Tennessee R. R. Co. Name of Lynchburg & Tenn. R. R. changed to this. (See Lynchburg & Tenn. R. R. Co.)	
2/20/51-65	B. P. W. for so much as will make its holding 3/5.....	1,800,000
2/ 9/53-68	B. P. W. to lend to.....	1,000,000
3/ 3/53-138	Capital increased by $1,500,000, with power to further increase by $1,000,000, and B. P. W. for 3/5..... If Va. & Tenn. does not accept provisions of this act, then independent Co. established as Va. & Kentucky R. R. Co., with same powers, etc.	1,500,000
3/12/53-139	Capital increased by $1,500,000 for branch from Montgomery Co. to point on New River near mouth of Greenbrier Riv. or to other suitable point for intersection with Covington & Ohio R. R. B. P. W. for 3/5..... This additional stock to be kept separate and to constitute a separate fund from	900,000

capital of said Co., and shall be applied only to the road for which it is subscribed. If Va. & Tenn. R. R. Co. does not accept the provisions of this act, then independent Co. incorporated as New River R. R. Co., subject to same provisions as to subscriptions to stock, etc.

3/18/56-83 Capital increased by $500,000, and B. P. W. for all 500,000

3/20/47-79 Washington & New Orleans Telegraph Co. In case of failure of R. R.'s to subscribe, then B. P. W. for so much as they deem expedient.

3/14/32-161 Winchester & Potomac R. R. Co. (From Winchester in Frederick Co. to point on Potomac River at or near Harper's Ferry in Jefferson Co.) B. P. W. for stock of—not exceeding 75,000

1/31/33-72 B. P. W.'s subscription increased to 2/5 of whole. (Act 4/8/31-187 shows capital $300,000.)..... 45,000

2/ 6/34-153 B. P. W. to borrow to pay its subscription to—

12/13/34-118 B. P. W. to borrow the money to pay its subscription to—

2/13/38-112 B. P. W. to borrow the money to lend to—to be secured by mortgage from the R. R. Co..... 150,000

3/25/43-71 Capital increased to $481,220, the increase to subscribed for by B. P. W. This an exchange of the debt due the State for an equivalent amount of stock.

3/15/53-148 Alexandria, Loudon & Hampshire R. R. Co. authorized to purchase or unite with this R. R. Co.

BRIDGES.

2/15/52/182	Buckhannon Bridge Co., Ineptd., $3,000.00 and B. P. W. for 3/5..... (Across Buckhannon River in Upshur Co.)	1,800
3/ 3/21-56	Cartersville Bridge Co. B. P. W. for stock of..... .... (Bridge over James River at Cartersville.)	5,000
3/20/37-156	B. P. W. to pay to for repairs.....	1,700
1/15/48-254	Cheat River Toll Bridge Co., Ineptd., $10,000, and B. P. W. for 2/5. (Bridge over Cheat River in Preston Co.) This payment is to be made from remainder of subscription by act 2/16/47 to Brandonville, Kingwood & Evansville Road. (See Brandonville, Kingwood & Evansville Road.)	
3/ 8/49-127	Changes B. P. W.'s subscription to 3/5..... This increase on same terms and conditions as in act next above.	6,000
2/26/53-183	Elk River Bridge Co. B. P. W. for 2/5 of of $15,000 ..... (Bridge over Elk River in Kanawha Co.)	9,000
3/15/51-132	Fairmont & Palatine Bridge Co. Amends incorporating act, makes capital $20,000, and B. P. W. for 3/5..... (Bridge over Monongahela Riv. in Marion Co.)	12,000
3/17/51-133	Fish Creek Bridge Co., Ineptd., $3,500, and B. P. W. for 3/5..... (Bridge over Fish Creek in Marshall Co.)	2,100
3/30/53-183	Guyandotte Bridge Co. Capital made $15,000, and B. P. W. for 3/5. (Bridge over Guyandotte River in Cabell Co.)	

1/23/54-59	Repeals above. Capital $25,000, and B. P. W. for 3/5	15,000
4/ 1/58-94	B. P. W. for 3/5 of additional $15,000....	3,000
1/23/33-58	Bridge over Jackson's River opposite Covington. B. P. W. to build.....	3,500
3/ 9/41-93	B. P. W. to pay on account of.....	344
4/ 9/39-104	Jude's Ferry Toll Bridge Co., Incptd., $20,000, and B. P. W. for 2/5..... (Bridge over James River at Jude's Ferry.)	8,000
2/16/54-60	Loudon & Berlin Bridge Co., Incptd., $50,000, and B. P. W. for 3/5..... (Over Potomac River opposite Berlin in Frederick Co., Maryland.)	30,000
3/11/50-107	Morgantown Bridge Co., Incptd., $18,000, and B. P. W. for 3/5..... (Toll Bridge over Monongahela River at Morgantown in Monongalia Co.)	10,800
3/15/51-132	Capital increased by $10,000, and B. P. W. for 3/5.....	6,000
2/28/54-60	Capital increased by $8,000, and B. P. W. for all.....	8,000
3/19/50-71	Bridge across New River in Giles Co. B. P. W. for 3/5 of $12,000.....	7,200
1/14/48-252	North Branch Bridge Co., Incptd., $5,000, and B. P. W. for 2/5. (Over North Branch of Potomac River in Hampshire Co.)	
3/14/50-103	Changes B. P. W.'s subscription to 3/5...	3,000
3/19/50-102	Potomac Bridge Co. B. P. W. for 2/5 of capital. (Act 3/22/47-144 shows $40,000.).. (Over Potomac River at Point of Rocks, Md.)	16,000

2/15/51-129	South Branch Bridge Co., Ineptd., $7,000, and B. P. W. for 3/5..... (Over S. Branch River in Hampshire Co.)	4,200
4/ 6/38-139	South Shenandoah Toll Bridge Co., Ineptd., $5,000, and B. P. W. for 80 shares at $25.... (Over Shenandoah River in Rockingham Co.)	2,000
3/26/39-111	Capital increased to $40,000, and B. P. W. for 2/5 of increase.....	14,000
3/17/49-154	Virginia & Maryland Bridge Co. B. P. W. for $10,000 of stock of..... (Bridge at Shepperdstown in Jefferson Co.)	10,000

JAMES RIVER CO. AND JAMES RIVER & KANAWHA CO.

2/17/20-39 James River Co. to be agent for the State in carrying out the work, and State to finance it. Work to be carried out as follows, and in the following order:

1. Improvement of navigation of Great Kanawha River from the falls to Ohio River.
2. Improvement of navigation of James River.
3. $100,000 road from mouth of Dunlap's Creek to Great Falls of Kanawha River.
4. Navigable canals and locks from Pleasant's Island to mouth of Dunlap's Creek.
5. Communications from the river to accommodate trade.

When works completed to be public highways. Treasurer of State to be ex-officio Treasurer of Co.

Co. to borrow annually $200,000, or such greater or less sums as hereafter authorized by law, which borrowing shall continue until otherwise directed by law. Co. to issue certificates and register them; to be irredeemable for 20 years, and then at pleasure of General Assembly. Int. not over 6 per cent.

State guarantees interest up to $12,000 a year.

2/28/21-48	Jas. Riv. Co. authorized to borrow $300,000 in addition to the $50,000 borrowed from the Literary Fund. State guarantees interest up to $18,000 a year.	
3/ 2/22-38	210 shares of stock in Bank of U. S. ($23,-370.59) to go to credit of fund for payment of interest of James River Co. loan; certificates of Jas. Riv. Co. loan to be bought at par with proceeds of sale of this stock.	
2/24/23-50	Authorized to borrow so much of the $350,-000 heretofore authorized as has not yet been borrowed, and also $80,000 in addition; State to issue bonds for same, interest at 6 per cent.; $18,000 a year pledged by State to pay the dividends to stock holders, or 12 per cent. for 12 years from 1820 and 15 per cent. thereafter forever.	
3/28/24-12	Authorized to borrow on credit of State, and State bonds to issue therefor at 6 per cent....	400,000
2/16/25-38	Authorized to borrow on credit of State not over.....	200,000
3/ 1/26-26	Authorized to borrow on credit of State not over $200,000, and State to issue 6 per cent. certificates for.....	200,000
3/ 7/27-37	Directs Jas. R. Co. to dispose of $40,000 of its surplus and appropriation fund to be expended in rebuilding bridge over Gauley River, and $28,000 of it to enable Jas. Riv. Co. and Commissioner of Kanawha road & navigation to complete works already contracted for and furnished, and to pay what is due on existing contracts.	
1/30/29-45	Authorized to borrow on credit of State not over ..... for extending western termination of Kanawha Tpke Road to mouth of Big Sandy.	50,000
2/28/29-48	Authorized to borrow on credit of State....	10,000

12/18/29-45	Authorized to borrow on credit of State for extension of Kanawha Tpke Road to mouth of Big Sandy	8,000
3/31/31-158	Authorized to borrow on credit of State for extension of Kanawha Tpke Road to mouth of Big Sandy	15,000
3/16/32-73	James River & Kanawha Co., Inceptd. Recites inadequacy of measures heretofore adopted for connecting navigable waters of Ohio River and James River. Capital $5,000,000, par val. $100. State subscribes for $1,000,000 and pays same by transfer of State's whole interest in works and property of James River Co. When 3/5 of the stock has been subscribed for by others than State for residue	2,000,000
2/20/33-59	James River Co. authorized to borrow on credit of State for building bridge and embankment over ravine of Campbell's Creek on Kanawha Road	4,000
3/11/34-99	Jas. Riv. Co. authorized to borrow on credit of State for Kanawha Tpke Road	10,000
2/14/34-101	James Riv. & Kan. Co. State's subscription to—to be one-half (i. e., $2,500,000), which is $500,000 more than by act 3/16/32-73 (above)	500,000
1/24/35-70	Makes State's subscription 3/5 (additional amount of $500,000)	500,000
3/21/37-95	B. P. W. to borrow on credit of State to meet requisitions on State stock in—	
3/23/39-59	Authorized to borrow and State to guarantee principal and interest	1,500,000
3/17/40-21	Old James River Co. Sum in State Treasury ($3,757.07) to credit of—and retained to meet probable unpaid dividends, transferred to credit of State.	

3/20/41-94	James Riv. & Kan. Co. State to issue new bonds in U. S. currency in lieu of sterling money (£123,801=$550,226.66).	
3/25/42-72	State loan for.....	250,000
3/ 1/47-81	State Treasurer to turn over to—State bonds to be secured by mortgage.....	1,236,000
2/16/48-169	Converting guaranteed bonds into new stock (registered bonds).	
3/ 9/49-83	State guarantees bonds of—not exceeding..	350,000
3/12/49-85	State guarantees bonds of—not exceeding..	150,000
1/25/50-46	Loan to—of State bonds.....	110,000
3/15/50-46	State guarantees bonds of.....	360,000
6/ 5/52-124	B. P. W. to borrow and lend to—for payment of interest and annuity.....	120,000
3/ 2/53-63	Loan to—by B. P. W. of $640,000 at $50,000 a month. To be raised by acts 3/27/51 and 5/25/52 (coupon bonds acts), and to be expended in extension of water line from Buchanan to point near Covington or Clifton Forge	640,000
3/29/53-64	B. P. W. to lend to—for completion of tidewater connection; money to be raised by coupon bond act of 1853.....	70,000
1/ 7/53-64	B. P. W. to borrow to pay interest on bonds of—guaranteed by State.	
3/ 3/54-33	B. P. W. to borrow and lend to for completion of tidewater connection.....	60,000
1/19/56-83	State pays interest (paid out of Sinking Fund) on bonds of—guaranteed by State. Int. due July 1/55 of $46,000, 1/1/56 of $67,675, and due 7/1/56 of $67,675 ($181,350).	

3/15/56-84 Auditor of Pub. Accts. directed to pay interest on bonds of—guaranteed by State, due 1/1/57.

12/22/57-15 Auditor directed to pay interest on bonds of—guaranteed by State; $67,800 due 7/1/57, and same amount due 1/1/58, 7/1/58 and 1/1/59 ($271,200).

3/16/58-93 To take over North River Navigation Co.

12/20/59-159 Auditor to pay interest on bonds of—guaranteed by State; $67,800 due 7/1/59 and same am't due 1/1/60.

3/23/60-113 Capital increased to $12,400,000, par val. $100, and B. P. W. to subscribe for 74,000 shares, which is to be a 6 per cent. preferred stock. Of this subscription 72,000 shares to be taken in satisfaction of the debt due from the Co. to State and for the assumption by State of the debt for which State is bound as surety for the Co. and the annuity of the old James River Co., and balance of 2,000 shares to be paid for in State bonds. This $200,000 to be expended to extinguish Co.'s floating debt..... 200,000

State to take up the guaranteed stock of the Co. and to issue in place thereof State bonds at 6 per cent., payable 34 years after this date.

Provides for issue to Kanawha Board of Directors of $300,000 of 6 per cent. State bonds, to be used for improvement of navigation of Kanawha River from mouth of Loup Creek shoals.

BANKS.

4/ 4/48-87 Branch Bank at Abingdon (Washington Co. Exchange Bk. authorized to establish—capital not less than $100,000 nor more than $500,000, and may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State subscribes for one-half..... 250,000

3/31/58-60	Branch Bank at Beverly (Randolph Co.) Bk. of Va., Farmers Bk. of Va., Bk. of Valley, Exchange Bk., North Western Bk., or Merchants & Mechanics Bk. of Wheeling authorized to establish—with capital not over $200,000, to be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State subscribes for one-half	100,000
4/ 1/58-61	Branch Bank at Buckhannon (Upshur Co.) Farmers Bk., Exchange Bk., Bk. of Va., Bk. of Valley or N. W. Bk., authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of the Banking Act of 3/25/37-68, by which State takes one-half.....	100,000
3/15/56-57	Branch Bank at Clarksburg (Harrison Co.) Bk. of Va., Farmers Bk. or Bk. of Valley authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes one-half.....	100,000
3/25/37-68	Exchange Bank of Virginia, Incptd. Capital $1,800,000, and State takes one-half.....	900,000
	To establish offices of discount and deposit at Richmond with capital of $500,000, Petersburg with capital of $500,000 and Clarksville $200,000.	
3/19/39-52	State Treasurer to subscribe for 4,500 shares of at not over $100 per share, and may borrow for of No. Western Bk. of Wheeling and Exchange Bank.....	450,000
3/25/37-68	Farmers Bank of Virginia. Capital increased by $1,010,000, and State takes 1/2...	505,000
	This new stock to be divided between said Bank and its branches as follows:	
	For Bank at Richmond.....$ 40,000	
	For Petersburg discount and deposit office 32,500	
	For Lynchburg discount and deposit office 212,500	

For Fredericksburg discount and deposit office	112,500
For Winchester discount and deposit office	62,500
For Danville discount and deposit office	50,000
For Farmville discount and deposit office	200,000
For Scottsville or Charlottesville, etc.	150,000
For Abingdon or Evansville, etc.	150,000

3/16/49-74 Authorized to furnish additional capital for office at Wytheville (Wythe Co.), so that whole capital of said branch will not exceed $500,000. Capital may be increased for this purpose, and State for 1/2.

3/15/49-72 Branch Bank at Fincastle (Botetourt Co.) Farmers Bk. or Exchange Bk. authorized to establish, with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2..... 150,000

3/16/50-40 Amends above so as to allow Bk. of Va., Farmers Bk., Exchange Bk., or any other bank, to establish office of discount and deposit at Fincastle, Salem, Christiansburg or Blacksburg; capital same as above.

3/30/60-217 Branch Bank at Harrisville (Ritchie Co.) Authorizes Bk. of Va., Farmer's Bk. of Va., Bk. of Valley, N. W. Bk., or Mer. & Mec. Bk. of Wheeling, to establish—with capital of not over $150,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2..... 75,000

3/23/60-229 Branch Bank at Huntersville (Pocahontas Co.) Bk. of Va., Farmers Bk., Bk. of Valley, Exchange Bk., N. W. Bk., or Mer. & Mec. Bk. of Wheeling, authorized to establish—with capital of not over $200,000, which may be raised as in 5th and 11th sections of Act of 3/25/37-68, by which State takes 1/2.. 100,000

3/15/49-73	Branch Bank at Jeffersonville (Tazewell Co.) Bk. of Va., Farmers Bk., Bk. of Valley or N. W. Bk. authorized to establish, with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	150,000
3/ 9/60-230	Branch Bank at Liberty (Bedford Co.) Bk. of Va., Farmers Bk., Exchange Bk., Bk. of Valley or Bk. of Commonwealth authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	100,000
3/24/60-228	Branch Bank at Marion (Smyth Co.) Bk. of Va., Farmers Bk., Bk. of Valley, Bk. of Commonwealth, N. W. Bk. and Mer. & Mec. Bk. of Wheeling authorized to establish, with capital of not over $150,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	75,000
3/25/37-68	Merchants & Mechanics Bank at Wheeling (Ohio Co.) Capital increased by $300,000, of which State subscribes for 1/2.....	150,000
	This capital to be distributed as follows:	
	For Bank at Wheeling.....$220,000	
	For Morgantown office of disc. & deposit 80,000	
5/17/52-87	Branch Bank at Newbern (Pulaski Co.) Exchange Bk., Bk. of Va., Farmers Bk. or Bk. of Valley authorized to establish—with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2....	150,000
3/25/37-68	North Western Bank of Virginia (at Wheeling, Ohio Co.) Capital increased by $500,000, and State takes 1/2.....	250,000
	This new stock to be divided as follows:	
	For N. W. Bk. at Wheeling....$315,000	

For Wellsburg discount and deposit office 85,000
For Parkersburg discount and deposit office 100,000

3/19/39-52 State Treasurer to borrow money to pay State's subscription to—

3/12/49-70 Branch Bank at Scottsville (Albemarle Co.) Exchange Bk. or Bk. of Va. authorized to establish, with capital not less than $75,000 nor more than $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.... 100,000

3/13/47-69 Branch Bank at Staunton (Augusta Co.) Bank of Valley authorized to establish—with capital not over $100,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2..... 50,000

3/25/37-68 Bank of Valley. Capital increased by $740,000, and State takes 1/2..... 370,000
The new stock to be divided between said Bk. and its branches as follows:
For Bk. at Winchester.....$150,000
For Leesburg office disc. & deposit 80,000
For Charlestown office disc. & deposit 80,000
For Romney office disc. & deposit. 95,000
For Staunton office disc. & deposit 200,000
For Warrenton office disc. & deposit 135,000

3/25/37-68 Bank of Virginia. Capital increased by $650,000, of which State takes 1/2..... 325,000
This new stock to be divided as follows:
For Lynchburg office disc. & deposit $150,000
For Charleston office disc. & deposit 200,000
For Fredericksburg office disc. & deposit 50,000
For Danville office disc. & deposit 50,000

3/18/40-55	Issue to—of new certificates in place of old.	
5/27/52-88	Branch Bank at West Columbia (Mason Co.) Bk. of Va., Farmers Bk., Exchange Bk. or Bk. of Valley authorized to establish, with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2....	100,000
3/31/48-86	Branch Bank at Weston (Lewis Co.) Farmers Bk., Bk. of Va., Bk. of Valley of Exchange Bk. authorized to establish—with capital not over $100,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	50,000
3/ 1/56-22	Act separating State from banks by providing for sale of State's stocks therein, except the stocks held in name of the Literary Fund, and application of proceeds to redemption of State debt. Fourth section of above act amended by act 4/3/58-9, which provides that the proceeds shall go into Sinking Fund.	

MISCELLANEOUS APPROPRIATIONS.

3/16/32-7	State appropriation to Brooke Co. for repairs to roads and bridges damaged by freshet in Ohio River.....	1,600
3/16/32-7	Same as to Cabell Co.....	600
3/16/32-7	Same as to Jackson Co.....	250
3/16/32-7	Same as to Mason Co.....	1,000
3/16/32-7	Same as to Ohio Co.....	4,500
3/16/32-7	Same as to Tyler Co.....	600
3/16/32-7	Same as to Wood Co.....	1,000

12/13/33-27	Law Library at Lewisburg (Greenbrier Co.) established and appropriation to of.... And Librarian at Richmond to transmit to—one copy of each of the books now constituting the Library Fund or which may hereafter be added to same.	1,200
3/10/35-16	State appropriation to.....	1,200
3/21/36-8	State appropriation to	1,250
3/28/39-13	State appropriation to.....	1,000
2/21/45-17	State appropriation to	500
3/16/50-13	State appropriation to.....	2,000
3/26/53-358	Joint resolution directing that in future, after making purchases necessary for State Library, such books as may be required by the judges shall be purchased out of Library Fund.	
3/22/58-117	Trans-Alleghany Lunatic Asylum. State appropriation for establishing—not over.....	25,000
1/ 6/60-105	Same to extent of $100,000, not over $50,000 of which to be paid in one year.....	100,000
2/ 9/44-23	West Liberty Academy (Ohio Co.) Loan to out of Literary Fund, to be secured by lien..	5,000
3/20/48-179	City of Wheeling (Ohio Co.) State guarantees bonds of to extent of $500,000 to pay City's subscription to stock of Baltimore & Ohio R. R. Co.. to be secured by mortgage of said City	500,000
3/29/58-16	State Auditor to pay interest on these bonds due 1/1/58 ($15,000)	15,000
1/31/60-158	State Auditor to pay interest on these bonds due 1/1/59 ($15,000)..... This act affirms State's claim to the lien.	15,000

MISCELLANEOUS.

2/20/28-15 Repeals provision of 12th section of act to create fund for internal improvement that all dividends shall go to other subscribers than the State, and puts State on equal terms with other subscribers.

2/11/32-71 General conditions on which future subscriptions to joint stock companies to be made.

Must appear that at least 1/4 of the private subscriptions of not less than 3/5 of the capital has been paid and the remainder either paid or made by solvent persons.

When in any year funds of B. W. P. inadequate to pay installments due on State subscriptions actually made, then B. P. W. to pay, as far as funds will go, the installments of such subscriptions as stand first according to date of subscription, and fund not to be chargeable with interest.

All companies to make annual reports to B. P. W.

4/9/38-24 Act providing for negotiation of loans for purposes of internal improvement.

All loans heretofore or hereafter authorized on account of works of internal improvement to be negotiated according to the provisions of this act, except so far as otherwise specially provided by the acts authorizing such loans.

In effecting the loans the B. P. W. to borrow on credit of State, at most favorable rate of interest, not over 5 per cent. On payment of the money so borrowed into the treasury certificates of State to issue, with interest payable semi-annually.

"All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly."

The stock of any joint stock co. purchased with the money so borrowed, and all dividends and net incomes which may accrue are pledged for payment of interest and principal of amounts so borrowed. Surplus dividends, etc., remaining after payment of interest to be devoted to purchase of certificates.

3/27/39-9 Amends above act. State Treasurer, on requisition of B. P. W., to issue certificates for any loans which they are now or may hereafter be authorized to procure for purposes of internal improvement and without requiring the previous payment of any money into the State treasury on account thereof.

4/8/39-11 Authorizing loans for payment of subscriptions and appropriations.

B. P. W. authorized to borrow such sums as may be necessary for payment of subscriptions and appropriations made by law to works of internal improvement. Interest not to exceed 6 per cent. and in other respects the loans to conform to provisions of the act of 4/9/38-9 and amendments thereof.

3/22/50-5 Negotiation of loans for internal improvements.

B. P. W. may provide, if they deem it expedient that certificates to be issued by Treasurer shall be irredeemable for 25 years, and thereafter redeemable at pleasure of General Assembly. Interest not to exceed 6 per cent. Not necessary to show on face of certificate specifically what improvement it is for.

3/17/56-20 Act providing for redemption of outstanding drafts on B. P. W. on the internal improvement fund.

To be redeemed by issue of 6 per cent. registered bonds.

3/18/58-86 Act for the relief of certain internal improvement companies and holders of debts on account of construction of State works by an issue of State bonds.

Second Auditor to issue 6 per cent. registered bonds in payment of amounts due on account of construction of internal improvements on State account and on account of State's subscriptions to stock of internal improvement companies.

1/19/25-26 Act calling in the old 6 per cent. certificates.

2/24/32-13 Cancelling 7 per cent. certificates amounting to $319,000, held by Literary Fund, being part of the stock issued to Bank of Va. and to Farmers Bank (loan by act 2/1/1814 and issuing one new certificate for whole amount at same rate of interest.

3/25/37-68 Act Increasing Banking Capital of Commonwealth.

Makes State subscribe to 1/2 capital of several banks whose capital is increased in accordance with this act, for establishing offices of discount and deposit throughout the State; and providing how capital to be raised.

3/1/56-22 Act separting State from the Banks.

(See last act under Banks.)

3/4/53-77 Act authorizing State Treasurer to receive from banks as securities for their issues any bonds guaranteed by State.

3/11/37-101 General regulations for incorporation of Rail Road companies. State reserves right to subscribe for 2/5 of stock and increases of stock of any such Co., subject to provisions of this act.

3/18/41-91 Act authorizing B. P. W. to appoint agents to purchase property sold under execution, mortgage, etc., by direction of B. P. W.

2/26/56-289 Joint Resolution in relation to sale of works of internal improvement companies in which State is interested.

B. P. W. directed have some representative or agent attend the sale of such works and to purchase same for the State if in judgment of B. P. W. State's interests would be protected or promoted thereby.

3/15/48-353 Resolution providing for the map to be prepared by Crozet.

3/29/51-6 Coupon Bonds.

Act authorizing issue of—B. P. W. authorized to borrow from time to time on credit of State money necessary to pay State's subscriptions to chartered companies, and certificates (coupon bonds) for same to be issued therefor, the principal of which to be payable at a day fixed by B. P. W., not less than 35 years from date of bond. Coupons for interest to be attached. But the bonds for money so borrowed may, at option of purchaser, be issued in the form heretofore used.

5/25/52-22 Amends above. Changes redemption date from 35 to 34 years. Bonds may at option of purchaser be in the form prescribed in 67th Chapter of Code of Va. (See next below). No bond to be sold at less than par.

Chap. 67 of Code, 1849, Provides for issue of registered bonds bearing interest at 6 per cent., payable semi-annually, the principal to be payable so soon after 20 years from date of bond as the General Assembly may desire.

4/9/53-33 Further amends Coupon bond act above. Bonds to be made payable at a day named therein, not more than 34 years from date of bond. Bonds may, at option of parties to whom issued, be in the form prescribed in 67th Chap. Code of Va. No certificate to be sold at less than par if the interest it bears be 6 per cent. or more. Coupon bonds not to be issued for less amount than $500 nor greater than $5,000 apiece.

3/18/56-21 Act providing for and regulating issue of registered bonds in lieu of coupon bonds.

3/18/56-18 Act authorizing issue of Treasury Notes.

These notes to be made payable not more than one year from their respective dates. Limit to amount outstanding at any one time. When sale and delivery of—to cease. This limit changed by amendment of 4/2/58-9.

3/9/60-305 Act authorizing transfer of certain turnpike companies and plank road companies to the counties in which they lie.

B. P. W. authorized to turn over to the counties in which they lie any turnpike or plank road that in the judgment of said B. P. W. can not be made productive. Counties must consent, and so must stockholders of said companies.

Literary Fund.

2/12/1811-8 Created.

3/25/53-- Capitation tax appropriated to.

Sinking Fund.

3/10/35-7 Sinking Fund Created.

Sum of $50,000 appropriated to, to be applied to redemption of such portions of State bonds as are held by individuals and corporations and can be purchased at par.

The Governor, Treasurer, Auditor, and Second Auditor constituted a corporate body as Commissioners of Sinking Fund.

2/21/45-11 Act providing for redemption of 6 per cent. public debt by issue of new bonds at 5 per cent.

3/15/49-8 Act providing for gradual redemption of public debt.

Repeals act 3/10/35 (above). All certificates of State stock purchased by Commissioners of Sinking Fund cancelled. Bonds of James Riv. & Kan. Co. guaranteed by State heretofore held by Commissioners of Sink. F. transferred to B. P. W.

3rd Section. Sum of $100,000 to be annually set apart and paid over by warrant of Auditor to order of B. P. W., to be applied by the Board for the gradual redemption of so much of the public debt as shall be due or redeemable from time to time.

4th Section. If the annual appropriation be insufficient to redeem any bonds falling due, the B. P. W. authorized to raise temporary loans enough to effect such redemption. All State bonds so redeemed to be cancelled and filed in Treasurer's office.

Va. Constitution 1851, Art. IV, sections 29, 30, 31, (Acts 1852-3, p. 331) Provides that there shall be annually set apart from the accruing revenues a sum equal to 7 per cent. of the State debt existing on 1/1/52. The fund thus set apart to be called the Sinking Fund, and to be applied to payment of the interest of the State debt and the principal of such as may be redeemable. If no part be redeemable, the balance after paying the interest to be invested in bonds of Va. or of U. S. or some of the States of the Union, and be applied to payment of the State debt as it should become redeemable. Whenever a debt hereafter shall be contracted by the State, there shall be set apart annually for 34 years a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon, which shall be a part of the Sinking Fund and be applied in the manner before directed.

Legislature authorized to sell the stock held by State in internal improvement companies, but the proceeds to be a part of the Sinking Fund.

Legislature not to contract loans or cause to be issued any State bonds or certificates irredeemable for a period greater than 34 years.

3/26/53-29 Act creating Sinking Fund for payment of semi-annual interest on and redemption of the public debt.

Appropriation annually, commencing with 1853, out of accruing revenues of State the sum of $838,028.68, that being 7 per cent. on $11,971,838.30, the ascertained debt of the State on January 1, 1852. The sum so set apart to be called the Sinking Fund, and shall be applied to the payment of the interest on the State debt and the principal of such part as may be redeemable, and if no part be redeemable, then residue of Sinking Fund, after payment of interest, to be invested in bonds of Va., U. S. or some of the States of the Union, and applied to payment of said debt as it shall become redeemable.

Whenever a debt is contracted by State there shall be set apart in like manner annually for 34 years a sum exceeding by one per cent. the aggregate amount of interest agreed to be paid, which sum shall be a part of the Sinking Fund and be applied in the manner before directed.

If Legislature should sell State stock in any internal improvement and other companies, the proceeds of such sales to constitute a part of the Sinking Fund and be applied in like manner, etc., etc.

4/8/53-32 Act providing for transferring and cancelling certain stocks held by B. P. W.

Recites passage of Sinking Fund Act of 3/26/53 (supra). Repeals third and fourth sections of the act 3/15/49-8 (supra), etc.

3/15/56-21 Act regulating the application of the Sinking Fund to the redemption of the public debt.

Sinking Fund Commissioners to annually apply entire residue of the fund after the payment of interest on the public debt to the redemption of such part of said debt existing on 1/1/52 as may be redeemable, and if no part thereof be redeemable, said residue shall be devoted to purchasing and canceling any other outstanding bonds or certificates of said debt which may have been issued prior to 1/1/52.

2nd Section. Said Commissioners to appropriate any State bonds issued since 1/1/52 which they have heretofore purchased to the redemption of such outstanding State bonds as were issued prior to said date, in like manner as the annual residue of said fund after payment of interest on public debt is hereinbefore directed to be appropriated thereto.

3/27/58-6 Act to make State investments more profitable by forcing payment of interest and Sinking Fund on loans to internal improvement companies of dividends on preferred stock and the interest on bonds of such companies guaranteed by State.

4/3/58-9 Act providing for proceeds from sales of bank stocks owned by State to go into Sinking Fund.

4/6/58-9 Amending Act 3/15/56 (supra).

Sinking Fund Commissioners to annually apply entire residue of said fund after payment of interest on public debt as follows:

So much as arises from the 7 per cent. on the debt existing 1/1/52, together with the proceeds of sales of bank stocks, shall be applied to redemption of such part of said debt as may be redeemable; and if no part be redeemable, said residue to be devoted to the purchase at their market value and cancellation of any outstanding bonds or certificates of said debt; and so much of said fund as arises from 1 per cent. on the debt created since 1/1/52 to be invested in the outstanding bonds or certificates of said debt at their market value and held by said Commissioners for the benefit of said fund. But if no bonds or certificates of either issue can be purchased with the fund applicable thereto, the same shall be invested in the stocks or bonds of other States of the U. S..

Section 2 of act 3/15/56 (supra) repealed.

[*Vol. 5. May 6, 1909 Plaintiff's General Exhibit No. 1. Abstract of Acts.*]

AFTERNOON SESSION.

The hearing was resumed pursuant to the taking of recess.

Mr. Anderson: We desire now to tender an abstract of the acts of the General Assembly from 1828 to 1860, inclusive, relative to the State debt. I have stated to my friends on the other side that there is nothing in this abstract of a controversial character.

The Special Master: Does it duplicate the material already in where these various indebtednesses are related to and connected with the legislation?

Mr. Anderson: It is a synopsis of all the legislation in reference to the public debt. It recites the legislation upon which the debt is created, and it is really an answer to that part of the decree which directs an ascertainment of information as to the authority under which the debt was contracted.

Mr. Carlisle: This was put in a long while ago. We have no objection to it. It is simply an index.

Mr. Anderson: That is all; or at least it is very little more than that.

The Special Master: Is there any objection to it?

Mr. Carlisle: No.

The Special Master: There is quite a good deal of material here that does not seem to relate to the legislation. I suppose this is a duplication of facts already in?

Mr. Carlisle: Yes.

The Special Master: On the left-hand margin are marks indicating what it is, as I understand it.

Mr. Anderson: Yes, sir.

Mr. Spooner: Of course we cannot take the time now to verify it; but we will let it go in subject to revision.

The Special Master: Then that is understood.

Mr. Spooner: If you want to prove anything from the act of course you will have to take the act; but this will help in finding the act.

The Special Master: This would be plaintiff's exhibit A-2, would it not?

Mr. Spooner: If I did say so, I did not mean to say that it goes in subject to objection; I meant it goes in subject to correction.

Mr. Robinson: You have the A exhibits running to A-13 now, I think?

Mr. McClintic: I would suggest you apply another letter to it, the letter H, if that is right.

The Special Master: No; if this relates to paragraph 1—or does it relate to all the paragraphs?

Mr. Anderson: It relates to all the paragraphs.

The Special Master: We will make it plaintiff's general Exhibit No. 1, then.

(The document was accordingly marked by the stenographer plaintiff's general Exhibit No. 1.)

DEFENDANT'S GENERAL EXHIBIT NO. 2.

This deed, made this 30th day of July in the year Eighteen hundred and fifty eight (1858) between the Coal River Navigation Company of Virginia party of the first part, and James L. Carr of the County of Kanawha & State of Virginia, William A. Drown of Pennsylvania, Isaac A. Storm & Abraham B. Clarke of New York, parties of the second part.

Whereas the said Coal River Navigation Company is at present justly indebted by bond, note & otherwise to certain persons & parties, as will hereinafter be designated & enumerated. And whereas the said Coal River Navigation Company being desirous to secure more effectually the payment of all its present indebtedness. Its Board of Directors did *therefor* at a called meeting held in the town of Charleston Kanawha County on Monday the 26th July 1858 unanimously pass resolutions authorizing & empowering Thomas L. Broun President of the said Company, to make execute & acknowledge for record, for & in behalf of the said Coal River Navigation Company a proper trust deed or mortgage on the entire works & property of the said Company, and on the works hereafter to be constructed. And also on the tolls accruing therefrom after first deducting from the said tolls; current expenses, repairs & expenditures necessary to be made to keep Coal River in a navigable order. As will more fully appear by reference to a copy of the said resolutions hereafter annexed.

Now this deed witnesseth that in consideration of the premises & in pursuance of the said resolutions, the Coal River Navigation Company aforesaid, by & through its President Thomas L. Broun, duly authorized & empowered as aforesaid, doth hereby grant unto the said James L. Carr, William A. Drown, Isaac A. Storm & Abraham B. Clark the following property to-wit:

(1) The Locks & Dams, and all other works made, erected & constructed on Coal River (meaning thereby Coal River proper and Little Coal River and Big Coal River) by the said Coal River Navigation Company for the purpose of improving the navigation of the said Coal River in and also all other works & improvements to be hereafter made, erected & constructed, on the said Coal River, for the purpose of repairing damages, restoring navigation, & making said Coal River navigable. Which said Locks & Dams are known & designated as follows to-wit"

Mouth Lock & Dam". Locks & Dams, No. *one*, No. *Two*, No. *Three* & No. *Four* located below the forks of Coal, and on Coal River *proper* Locks & Dams No. *Five*, No. *Six*, No. *Seven*, & No. *Eight*, located

above the forks of Coal & on Big Coal River, and finally Lock & Dam No. *A* located above the forks of Coal & on Little Coal River.

(2) All other property real or personal belonging to the said Coal River Navigation Company & in any wise appertaining to the navigation or the navigation improvements aforesaid.

(3) And also all tolls arising & accruing from the said navigation works & improvements, after *first* deducting from the said tolls; current expenses, repairs & expenditures necessary to be made to keep Coal River aforesaid in a navigable order.

In Trust to secure to the following persons & parties the payment of the following indebtedness to-wit:

To Henry S. Kupp of Pennsylvania the sum of Thirty three thousand, three hundred & thirty three dollars & thirty three cents ($33.-333.33c) for bonds of the Coal River Navigation Company issued as follows thirty three bonds dated July 15th 1858 bearing 8 per cent interest per Annum, each for $1000. & payable on the 1st July 1863. to the said Henry S. Kupp or bearer. And one other bond for $333.-33/100 dated and made payable in like manner to the said Kupp or bearer.

To J. Brice Smith of New York & others the sum of Nine Thousand dollars ($9000) for bonds of the said Company issued as follows. Five bonds dated July 15th 1858, bearing 8 per cent interest per Annum each for $1000 & payable on the 1st July 1863 to the said J. Brice Smith & to others And Eight other bonds of $500, each dated & payable in like manner. Which bonds ($9000) were issued for the purpose of completing the Lock & Dam at the mouth of Coal River & in persuance of a subscription made thereto.

To the Coal River & Kanawha Mining & Manufacturing Company the sum of Two Thousand six hundred & seventy eight dollars & sixty cents ($2678.60/100) for five bonds of the said Coal River Navigation Company, dated August 1857, bearing 8 per cent interest per annum each for $535.72/100 & payable on the 1st day of July 1862.

To Du Bois & Vandervort of New York the sum of one thousand & seventy one dollars & forty four cents ($1071.44) for two bonds of $535.72 Each, dated & payable as the bonds last aforesaid.

To Isaac A. Storm of New York the sum of One thousand & seventy one dollars & forty four cents ($1071.44) for two bonds of, $535.72 each dated & payable as the bonds last aforesaid.

To Charles M. Connally of New York the like sum of one thousand & seventy one dollars & forty four cents ($171.44) for two bonds of $535.72 Each dated & payable as the bonds last aforesaid.

To B. A. Munford of New York the sum of Five Hundred & thirty five dollars & seventy two cents ($535.72) for one bond, dated & payable as the bonds last aforesaid.

To John C. Thatcher of New York, the like sum of Five Hundred

& thirty five dollars & seventy two cents ($535.72) for one bond dated & payable as the bond last aforesaid.

To Henry A. Hurlburt, the sum of Five hundred & thirty five dollars & seventy two cents ($535.72) for one bond, date & payable as the bonds last aforesaid.

To William H. Webb of Kanawha the balance due on a judgment rendered in the United States Court held at Charleston Kanawha Co. in the Spring of 1856. The said balance being now about two thousand dollars ($2000)

To the Western Mining & Manufacturing Company, the sum of two thousand dollars ($2000) for four bonds of $500 each dated November 1857 payable on the 1st July 1861 & bearing 8 per cent interest per annum.

To J. Brice Smith of New York the sum of one thousand dollars ($1000) for bonds issued as follows; one bond for $500. dated June 6th 1857, made payable on the 1st July 1861 & bearing 8 per cent interest per annum and two other bonds for $250, each, dated & made payable in like manner as the last bond aforesaid.

To Ackerman & Mixer of New York, the sum of Five Hundred dollars ($500) for one bond dated & payable as the bonds last aforesaid.

To G. W. Coster of New York the sum of Five Hundred dollars ($500) for one bond dated & payable as the bond last aforesaid.

To Isaac A. Storm of New York the sum of Five hundred dollars ($500) for one bond dated & payable as the bond last aforesaid.

To Cornelius Dubois of New York, the sum of Five hundred dollars ($500) for one bond dated & made payable as the bond last aforesaid.

To Hazen Lathrop of Ohio, the sum of Three Thousand three hundred & eighty nine dollars & ninety four cents ($3389.94/100) for bonds issued as follows, three bonds dated May 24th 1858 each for $929.98 payable in 6, 12 & 18 months from date, with interest thereon from Oct. 13th 1857. And one other bond dated June 11th 1858 for $600 payable two years after date with interest likewise from Oct. 13th 1857.

To Watt & Jordan, the sum of one thousand, seven hundred & twelve dollars & nine cents ($1712.09) for bonds issued as follows: one bond dated 11th June 1858 for $1112.09 & payable six months after date, with interest thereon from the 7th Oct. 1857, and one other bond dated likewise 11th June 1858 for $600 & payable two years after date.

To Robert Blaine, the sum of One hundred & twenty five dollars & fifty cents ($125.50) for written order of Watt & Jordan on the C. R. N. Co. & accepted, dated October 5th 1857.

To H. Campbell & Co. of Ohio, the sum of Forty six dollars & forty

three cents ($46.43) for written order of Watt & Jordan on the C. R. N. Co. & accepted dated October 30th 1857.

To Ruffner Hale & Co. the sum of Five Hundred & thirty five dollars & twenty five cents ($535.25) for written order of Watt & Jordan on the said C. R. N. Co. & accepted for $689, but subject to a credit of $153.75 thereon dated November 2nd 1857 payable in six months after date to F. Walker agent of the said Ruffner Hale & Co. & bearing interest from date.

To W. F. & J. H. Goshorn, the sum of three hundred & twenty four dollars & seventy cents ($324.70) for written order of Watt & Jordan on the said C. R. N. Co. & accepted dated November 2nd 1857, payable six months after date & bearing interest from date.

To Benjamin F. Scott the sum of One Hundred & twenty six dollars & sixty cents ($126.60) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated Nov. 18th 1857 & payable six months after date.

To Thomas B. Swann, the sum of three hundred & twenty five dollars & eighty-one cents ($325.81) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated Nov. 2nd 1857 & payable six months after date, with interest from date.

To Henry H. Neal, the sum of Eighty seven dollars & Fifty seven cents ($87.57) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated May 12th, 1858, & payable sixty days after date:

To James Gillespie, the sum of three hundred & twenty five dollars ($325) for note executed 13th July 1857, & payable 12 months after date, with interest thereon from date:

To Elliot R. Thomas, the sum of two hundred & seventy five dollars ($275) for note executed, dated & Payable as last aforesaid:

To James Canterbury & Ralph Thompson the sum of Three hundred dollars, ($300) for note executed, dated & payable on the 16th June 1858.

To Henry Roberts Thomas the sum of Two hundred & fifty dollars ($250) for bond dated 11th June 1858, & bearing interest from 17th August, 1857.

To Clement Smith of Peytona, the sum of Three hundred & ninety eight dollars & twelve cents ($398.12) for note executed & dated the 13th day of November, 1857 & payable nine months after date.

To the Western Mining & Manufacturing Co., the sum of three hundred dollars ($300) for bond dated & executed the 26th July 1858, & payable six months after the date thereof.

And finally to secure the payment of any other indebtedness of the said Coal River Navigation Company now due & not hereinbefore enumerated & specified.

In Trust nevertheless upon the following terms & conditions to-wit:

First: That no sale of the said works & property or any part *the* thereof shall take, place under & by virtue of this conveyance, before the 1st day of July in the year Eighteen hundred & sixty three (1863)

Secondly. That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863, thence the said James L. Carr William A. Drown Isaac A. Storm & Abraham B. Clarke may thereafter, at the request of any of the said creditors, offer for sale & sell the works & property aforesaid of the Coal River Navigation Company.

Thirdly: That no such sale of the said Works & property shall however take place unless notice thereof shall first have been given, and the work & property advertised for a period of ninety days previous to the sale, in the Kanawha Newspapers & in the principal newspapers published in the city of Richmond; and also unless personal notice of the said sale, shall have been served on the Board of Public Works, ninety days previous to the sale.

And Fourthly That the entire controul, direction & management of all the works & property aforesaid and every part thereof of the said Coal River Navigation Company, shall notwithstanding this conveyance, be, remain, & continue under the power & authority of the stockholders, & Board of Directors of the said Coal River Navigation Company, as heretofore until a sale of the said works & property shall have been made as aforesaid.

It being the object intent & purpose of this deed to place all the creditors of the said Coal River Navigation Company on the same footing, and to create a lien, that will operate alike for the benefit of all the said creditors, on all the present work & property both real & personal, belonging to the said Coal River Navigation Company, and in any wise appertaining to the navigation improvements thereof, and also on all the works to be constructed & erected hereafter by the said Coal River Navigation Company, for the purpose of repairing damages, restoring & improving the navigation of Coal River as aforesaid, from its mouth to Manningsville on Little Coal River, and to Peytona on Big Coal River.

In testimony whereof the said Coal River Navigation Company has caused these presents to be signed in its behalf by its President Thomas L. Broun and its common & corporate seal to be hereunto affixed, at Charleston Kanawha County Virginia this 30th day of July 1858.

THE COAL RIVER NAVIGATION COMPANY

(SEAL) By THOS. L. BROUN. Pres'dt.

Teste:

J. M. DODDRIDGE.

Keeper of the Seal.

Extract from the minutes of a called meeting of the President and Directors of the Coal River Navigation Company held at the office of the said Company in Charleston Kanawha on Monday the 26th July 1858.

Present: Thos. L. Broun, President; John D. Vanhorn, William D. Pate, Henry W. Goodwin, Clement Smith, Directors.

"On motion it was unanimously resolved:

(1) That the President Thos. L. Broun be & is hereby authorized & empowered for & in behalf of the Coal River Navigation Company to make, execute & acknowledge for record a proper Trust Deed or Mortgage, on the entire works & property of the Company, and the works hereafter to be constructed, and also on all the tolls accruing therefrom; after *first* deducting from the said tolls current expenses, repairs, & expenditures necessary to be made, to keep the river in navigable order, in order thereby to better secure the payment of all the present indebtedness of this Company.

(2) That the said deed shall include & embrace all the present indebtedness hereinbefore enumerated, and it shall also contain a clause giving to any creditor that may be omitted the full right & benefit to share & participate in the said Deed in common with the other creditors:

(3) That James L. Carr of Kanawha, William A. Drown of Pennsylvania, Isaac A. Storm & Abraham B. Clarke of New York shall be the persons to whom the works & property aforesaid shall be conveyed as aforesaid to be by them held in trust for the benefit of the creditors aforesaid.

(4) That no sale of the said works & property or any part thereof shall take place before the 1st day of July, Eighteen hundred & Sixty three (1863)

(5) That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863; The *the* said James L, Carr William A. Drown Isaac A. Storm, & Abraham B. Clarke, may thereafter at the request of any of the said creditors, offer for sale & sell the works & property aforesaid, of the Coal River Nav. Co.

(6) That no such sale of the said works & property shall however take place, unless notice thereof shall first have been given & the works & property advertised for a period of ninety days previous to the sale. in the Kanawha Newspapers & in the principal newspapers published in the city of Richmond and also unless personal notice of the said sale shall have been served on the Board of Public Works ninety days previous to the sale.

(7) That the entire control direction & management of all the works & property aforesaid & every part thereof of the Coal River Nav. Co., shall notwithstanding the conveyance aforesaid, be, remain & continue under the power & authority of the stockholders & Board

of Directors of the said Company as heretofore until a sale of the said works & property shall have been made as aforesaid.

J. M. DODDRIDGE.
Secretary Coal River Nav. Co.

Virginia: Kanawha County Court Clerk's Office 5th August, 1858.

The foregoing deed with the resolutions thereto appended was this day presented to me and duly acknowledged by Thomas L. Broun Esq., President of the Coal River Navigation Company and is thereupon admitted to Record.

Teste: A. W. QUARRIER. Clk.

A true copy from the record.

Teste: L. C. MASSEY Clerk.
Kanawha County Court.

Deed of Trust Book No. 1 Page No. 310.

(SEAL.)

DEFENDANT'S GENERAL EXHIBIT NO. 3.

This Deed, made this Twenty fifth day of October, Anno Domini Eighteen Hundred and Sixty five, Between James L. Carr of the County Of Kanawha and State of West Virginia, William A. Drown of the City of Philadelphia, in the State of Pennsylvania Isaac A. Storm of the City of New York and Abraham B. Clark of the Said City of New York of the first part, and Clement Smith of Peytona in the County of Boone State of West Virginia, William F. Johnson of the Said City of Philadelphia and J. Eugene Flandin of the Said City of New York parties of the second part, WITNESSETH: That Whereas, "The Coal River Navigation Company" of the Counties of Boone and Kanawha State of West Virginia, by a certain Deed bearing date the thirtieth day of July Anno Domini Eighteen Hundred and Fifty Eight and recorded in the Clerk's Office of the Said Counties of Kanawha and Boone, did grant unto the said James L. Carr, William A. Drown Isaac A. Storm and Abraham B. Clark, the following property to-wit;

(First) The Locks and Dams and all other works made erected and constructed on Coal River (meaning thereby Coal River proper, and little Coal River and Big Coal River) by the said Coal River Navigation Company, for the purpose of improving the navigation of the said Coal River and also, all other works and improvements to be hereafter made, erected and constructed on the said Coal River for the purpose of repairing damages, restoring navigation and making the said Coal River navigable, which Said Locks and Dams are known and designated as follows to-wit: "Mouth Lock and Dam", Locks and Dams, No. one, No. two, No. three and No. Four located below the forks of Coal River and on Coal River proper Locks and Dams No. Five, No. Six, No. Seven and No. Eight located above the forks of Coal and on Big Coal River and finally Lock and Dam No. A located above the forks of Coal on Little Coal River.

(Second) All other property, real or personal, belonging to the Said Coal River navigation Company, and in anywise appertaining to the navigation or the navigation improvements aforesaid;

In Trust to secure the payment of Henry S. Kupp of Pennsylvania the sum of Thirty Three thousand three hundred and thirty three dollars and thirty three cents ($33,333.33) for bonds of the Coal River Navigation Company, issued as follows: Thirty three Bonds dated July 15th. 1858, bearing eight per cent interest per annum, each for $1000 and payable on the 1st July 1863, to the said Henry S. Kupp or bearer and one other Bond for $333.33 dated and made payable in like manner to the Said Kupp or bearer and also to secure cer-

tain other indebtedness of the Said Company particularly Specified and Set forth in the Said Trust Deed, upon the following terms and conditions, to-wit;

First: That no Sale of the Said works and property, or any part thereof, Shall take place, under and by virtue of this conveyance before the 1st day of July, in the year Eighteen Hundred and Sixty three (1863)

Secondly: That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863, then the said James L. Carr William A. Drown Isaac A. Storm and Abraham B. Clark may thereafter at the request of any of Said Creditors, offer for Sale and sell the works and property aforesaid of the Coal River Navigation Company.

Thirdly: That no such sale of the Said works and property Shall however take place, unless notice thereof Shall first have been given, and the works and property advertised for a period of ninety days previous to the Sale in the Kanawha Newspapers, and in the principal Newspapers published in the City of Richmond And also unless personal notice of the Said Sale Shall have been Served on the *Bord* of Public Works, ninety days previous to the Sale.

And Whereas the Said Coal River Navigation Company, failed to perform the requirements contained in Said Deed, and was on the first day of July Anno Domini Eighteen hundred and Sixty three in default of the payment of its indebtedness, Specified as aforesaid and of every part thereof; And the Said James L. Carr, William A. Drown, Isaac A. Storm and Abraham B. Clark, Trustees, were thereafter to-wit; on the fourth day of July A. D. Eighteen hundred and Sixty five requested and required by Sundry Creditors mentioned in Said Trust Deed, to offer for Sale and Sell the works and property aforesaid of the Coal River Navigation Company, according to the terms and conditions Specified in Said Deed of Trust: Whereupon the said James L. Carr, William A. Drown Isaac A. Storm and Abraham B. Clark, in execution of the said Trust, did on the Twenty fifth day of October A. D. Eighteen Hundred and Sixty Five after giving ninety days notice of the time and place of Sale by advertising the Same in the Kanawha Republican and West Virginia Journal two Newspapers published in the Town of Charleston, County of Kanawha, aforesaid, and also by advertising the Same *the Same* in the Richmond Whig, the Commercial Bulletin and the Register, three newspapers published in the City of Richmond, State of Virginia, and also by Serving Personal notice of Said Sale, ninety days previous thereto, on the *Bord* of Public Works, for the State of West Virginia, and by Serving a Similar notice of at the Same Time upon the *Bord* of Public Works, for the State of Virginia. Offer for Sale all the locks and dams and other works, made, erected, and constructed,

by the Said Navigation Company on Coal River, including Little and Big Coal Rivers and also all the Estate real and personal, belonging to the Said Company, together with all rights, privileges, franchises, and appurtenances, thereunto belonging or in anywise appertaining. At Public Auction to the highest bidder for cash in front of the Court House door of Kanawha County on Wednesday the Twenty fifth day of October, aforesaid, at which Sale the said Clement Smith, William F. Johnson and J. Eugene Flandin being the highest bidders became the purchasers, for the Sum of Six thousand Five Hundred Dollars ($6500.00)

Now Therefore This Deed further Witnesseth: that the said James L. Carr, William A. Drown, Isaac A. Storm, and Abraham B. Clark in performance of their duties as Trustees of and for the Said Coal River Navigation Company, and for and in consideration of the Sum of Six Thousand five hundred dollars to them the Said James L. Carr William A. Drown Isaac A. Storm and Abraham B. Clark, Trustees in hand paid by the Said Clement Smith William F. Johnson and J. Eugene Flandin before the Sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given granted, bargained, and sold and by these presents do give, grant, bargain, and Sell unto the said Clement Smith, William F. Johnson and J. Eugene Flandin, under the name of "navigation Company of Coal River" (which they have adopted by virtue of authority granted or *confered* upon purchasers of any public works by Section 27 of Chapter 61 of the Code of Virginia, of 1849) All the locks and dams and other works, made erected and constructed by the Said Coal River Navigation Company on Coal River including Little and Big Coal Rivers and also all the estate real and personal belonging to the Said Company, together with all rights, privileges, franchise and appurtenances thereunto belonging, or in anywise appertaining to the Said Coal River Navigation Company (For a fuller description of the property hereby conveyed, reference is here made to the Said Trust Deed recorded in the Clerk's Office of the County of Boone in Book 13 page 435 &c and in the Clerk's Office of the County of Kanawha in Book "W" page 310 &c.

Witness the following Signatures and Seals.

JAMES L. CARR. (Seal)
WILLIAM A. DROWN. (Seal)
ISAAC A. STORM. (Seal)
ABM. B. CLARK. (Seal)
Trustees.

State of West Virginia, County of Kanawha SS:

I, John A. Truslow, a Justice of the Peace for the County aforesaid in the State of West Virginia, do certify that James L. Carr whose name is signed to the foregoing writing bearing date on the

Twenty fifth day of October, A. D. Eighteen hundred and Sixty five has acknowledged the same before me in my County aforesaid.

Given under my hand this Twenty fifth day of October A. D. 1865.

JOHN A. TRUSLOW. J. P. (Seal)

State of Pennsylvania, City of Philadelphia, SS:

I, William V. Archer a commissioner appointed by the Governor of the State of West Virginia, for the Said City and State, do certify that William A. Drown whose name is Signed to the foregoing writing bearing date the Twenty fifth day of October, A. D. 1865 has acknowledged the same before in my city aforesaid.

Given under my hand this Eleventh day of November, A. D. 1865.

W. V. ARCHER. (Seal)
Commissioner for West Virginia,
Philadelphia, Penn.

[W. V. Archer
commissioner
of deed
Philadelphia, Penn.]

City and State of New York SS:

I, Henry J. Cullen Jr. a commissioner appointed by the Governor of the State of West Virginia, for the Said City and State, do certify that Isaac A. Storm and Abraham B. Clark whose names are Signed to the foregoing writing bearing date the Twenty fifth day of October, A. D. Eighteen Hundred and Sixty Five have acknowledged the Same before me in my City aforesaid.

Given under my hand this Fifteenth day of November, A. D. 1865.

(Seal) HENRY J. CULLEN. JR. (Seal)
Commissioner for West Virginia in N. York.

Kanawha County Recorder's Office November 23rd, 1865,

This Deed was this day presented to me in this Office & together withe the Several Certificates of acknowledged thereon endorsed, and being duly Stamped according to Law was thereupon admitted to record.

Teste: JNO. SLACK. Recr.

A true copy from the record.

Teste: L. C. MASSEY Clerk.
Kanawha County Court.

Deed Book "Y" Page No. 546.

(SEAL)

DEFENDANT'S GENERAL EXHIBIT NO. 4.

To the Recorder of Kanawha County West Virginia:

The Undersigned Trustees, respectfully report, That in pursuance of the provisions of a certain Deed of Trust made by the Coal river Navigation Company dated July 30th 1858, and at the request of some of the creditors therein mentioned, They offered for sale, on the 25th day of October, 1865, after giving ninety days notice of the time and place of sale, by advertising the same in the Kanawha Newspapers, and in three of the newspapers published in the City of Richmond, State of Virginia, and also by serving personal ——— of said sale ninety days previous thereto on the Board of Public Works, for the State of West Virginia, and for the State of Virginia, all the Locks and Dams and other Works made, erected, and constructed by said Navigation Company on Coal River, including Big and Little Coal Rivers, and also all the Estate real and personal, belonging to the said Company, together with all rights, privileges, franchise and appurtenances thereunto belonging, or in any wise appertaining, at Public Auction, to the highest bidder for cash, in front of the Court House door of Kanawha County; at which Sale, Clement Smith, William F. Johnson and J. Eugene Flandin, being the highest bidders, became the purchasers, for the Sum of Six *Hundred* five hundred dollars ($6500)

And the undersigned Trustees, thereupon made, executed and acknowledged for record, a Deed of conveyance of the property thus sold, to the said purchasers, under the name of the "Navigation Company of Coal River," which they had adopted by virtue of authority conferred upon purchasers of any public Works, by Section 27 of Chapter 61 of the Code of Virginia of 1849.

After paying the expenses attending the sale, and the execution of the Trust which amounted to three hundred and ninety-four dollars and fifty cents ($394.50) Vouchers for which are herewith filed, there was left a balance of Six thousand one hundred and five dollars and fifty cents ($6,105.50) to be divided amongst the creditors of the Coal River Navigation Company, whose aggregate claims, with interest thereon to the 25th day of October, 1865, Amounted to the sum of Eighty five thousand Six hundred and ninety eight dollars and Seventy nine cents ($85,698.79c)—Shortly after the sale was completed, a notice was published in one or more newspapers, requesting the creditors of the company to present their claims for settlement and receive payment therefor in money, or Stock, in the Navigation Company, as each might elect.

The following Statement Shows the payments in money, thus far made by the Trustees.

Claim.	Amt. of Prin.	Creditors.	Amt. pro rata.	To Whom Paid.
2 Bonds	$ 1,071.44	J. A. Storm		
1 "	1,000.00	H. S. Kupp	$229.67	J. B. Storm
3 "	1,000.00	J. B. Smith	119.05c	H. Young
2 "	2,000.00	H. S. Kupp		
1 "	500.00	J. A. Storm		
2 "	1,071.44	Du Bois & al.		
2 "	1,071.44	C. M. Connally		
1 "	500.00	J. A. Ackerman		
1 "	250.00	H. A. Du Bois	627.11c	T. L. Brown Agt. &c.
3 "	2,789.94	H. Lathrop		
1 Note	600.00	H. Lathrop		
1 "	398.12	C. Smith		
1 Judgment	325.81c	T. B. Swann	434.15c	T. L. Brown Agt. &c.
2 Bonds	1,712.09	Watt & Jordan	180.90c	T. L. Brown Agt. &c.
1 "	535.72	H. A. Hulbut	63.25	D. DuBois Prest. &c.
26 "	26,000.00c	H. S. Kupp		
4 "	2,000.00c	Westn Ming & M. Co.	3,162.48	D. DuBois Prest. &c.
1 Judgt.	535.25	Ruffner, Hale & Co.	56.35c	J. L. Brown on suggestion.
1 "	325.00	I. Gillespie	34.65	I. Gillespie
1 "	125.50	R. Blaine	13.25	C. Blain, Ad. &c.
1 "	275.00	E. R. Thomas	25.00	E. R. Thomas
1 Note	250.00	H. R. Thomas	26.55	D. DuBois Prest. &c.
1 Judgt.	2,075.57	W. H. Webb	112.21	Smith & Knight on Sug.
1 "	324.70	W. F. & J. H. Goshorn	34.20	D. DuBois Prest. &c.

Amounting to the sum of $5,128.82, and leaving a balance (————) in the hands of James L. Carr one of the Trustees of nine hundred and Seventy six dollars and sixty eight cents ($976.68c), which is still unappropriated. The claims thus extinguished with the receipts and other vouchers are herewith returned, and the Trustees file also a report made by the "Navigation Company of Coal River" *compamy* a statement of the entire indebtedness of the Coal River Navigation." and showing what each creditor was entitled to in money on the 25th day of October, 1865. This report has been delayed in consequence of the inability of the Trustees to get together the Bonds and notes of the "Coal River Navigation Company" which were held by parties scattered from Kanawha to New York, and some of which is thought are now in Europe and not withstanding the time which has elapsed since **since** the sale was made; and the persistent efforts which have been used by advertisement and otherwise to procure all the bonds, several thousand of them are still out standing and unsettled.

All of which *us* respectfully submitted by

JAMES L. CARR for himself
and the other Trustees.

Kanawha County Recorder's Office, 30th July 1867.
This Report of Sale by James L. Carr Trustee was this day presented in this office and thereupon admitted to record.

teste. JNO. SLACK. Recr.

A true copy from the record.

Teste: L. C. MASSEY, Clerk.
Kanawha County Court.

T. D. No. 2 page 237.

(SEAL)

WEST VIRGINIA GENERAL EXHIBIT NO. 5.

AUDITOR'S REPORT.

AUDITOR'S OFFICE,
Wheeling, Nov. 25th, 1862.

The Governor of the Commonwealth having summoned the representatives of the people to meet in Extraordinary Session, on Thursday, the 4th day of December, 1862, the Auditor of Public Accounts, although not required so to do, deems it a duty, as a full fiscal year has passed since the last Session of the General Assembly, to lay before the Legislature the financial condition of the State, at the close of the fiscal year ending the 30th of September, 1862.

The whole amount of Revenue received from all sources, as well as the whole amount disbursed, for the fiscal year ending the 30th of September, 1862, is as follows:

Amount received for 1862	$205,251.80	
Amount disbursed for 1862	165,450.17	
		$ 39,801.63
Add surplus in the Treasury at the close of the fiscal year of 1861		80,355.84
Net surplus in the Treasury, 30th September, 1862		$120,157.47

Table A. will exhibit the amount paid into the Treasury in the fiscal year 1862, by each County of the State, with the miscellaneous payments from Banks, &c.

TABLE A.

Amount received from the following Counties for Tax on Land, Personal Property, License, and Tax on Deeds, &c.

Jackson County	$ 1,428.57	Marshall County	2,772.25
Upshur County	6,249.02	Tyler County	4,651.78
Northampton County	954.09	Wetzel County	4,288.73
Accomac County	3,069.72	Brooke County	929.76
Alexandria County	2,978.47	Pleasants County	2,573.46
Randolph County	160.00	Kanawha County	4,437.18
Barbour County	4,762.16	Taylor County	5,690.15
Tucker County	733.00	Hancock County	2,548.27
Lewis County	9,354.69	Marion County	11,670.59
Wirt County	3,753.37	Preston County	14,199.76
Mason County	8,614.95	Ohio County	25,968.20
Doddridge County	2,228.14	Monongalia County	10,044.09
Wood County	14,557.94	From Banks, Saving Banks, Insurance Companies, Railroads, Notary Publics, Redemption of Delinquent Lands	30,698.07
Harrison County	15,534.19		
Ritchie County	5,789.93		
Putnam County	4,420.25		
Roane County	191.02		
			$205,251.80

Table B, will exhibit the amount expended under the different appropriations for the fiscal year ending 30th September, 1862.

TABLE B.

Salaries of Officers of Civil Government	$ 10,711.35
Contingent Expenses of Auditor's and Treasurer's office	1,653.74
Contingent Expenses of Secretary's and Adjutant General's office	388.65
Board of Public Works	22.25
Salary of Adjutant General	1,403.06
Public Printer	2,888.18
Clerks in Auditor's office	900.00
*Appropriation for Military purposes	11,507.69
Janitor to Executive offices	339.00
Messenger to Executive	159.65
Executive Council	936.00
Adjutant General's Clerk	305.51
Expenses of Elections	276.68
*Civil Contingent Fund	16,884.86
Pay of Judiciary	10,829.43
Contingent Expenses of Courts	2,391.32
Commissioners of Revenue	10,563.47
Expenses of Legislature, July 1st, 1861	99.31
Expenses of Convention, August 6th, 1861	271.41
Sale of Uncurrent Funds	558.79
Lunatics in Jail	3,207.55
Criminal Charges	6,503.43
Sheriff's Commissions	250.66
Lunatic Asylum at Weston, under resolution of 1861	4,371.23
Lunatic Asylum at Weston, under Act of General Assembly of January 14th, 1862	21,684.00
Expenses of Militia of State	2,425.29
Expenses of Convention of Nov. 26th, 1861	16,399.25
Expenses of General Assembly, December 1st, 1861	20,592.90
Delinquent Taxes, 1861	2,430.77
*For Patrols of State	5,404.51
Thomas Hornbrook, per Act of 13th February, 1862	490.33
Coroner's Inquests	28.00
Expenses of General Assembly, 6th May, 1862	4,229.56
*Lunatic and other Asylums of the State	3,722.63
Miscellaneous account for which there was no appropriation	563.31
	$165,450.17

Items marked with a * were disbursed by order of the Executive, by special provisions of the Acts of the General Assembly.

Table C, will exhibit the amount of money received into the Treasury (as near as the Auditor can ascertain) for Capitation Tax, during the fiscal year of 1862. It is also proper to remark that other counties than those mentioned, have paid upon this fund, but owing to the absence of their Delinquent Lists, no proper estimate can be made of the amount.

TABLE C.

Amount of Capitation Tax, less Sheriff's Commission, paid into the Treasury by the following Counties, viz:

Doddridge County	$ 736.56	Monongalia County	$ 1,562.79
Wood County	1,436.76	Hancock County	584.82
Wetzel County	734.60	Wirt County	464.76
Preston County	1,756.27	Ritchie County	755.75
Brooke County	606.93	Pleasants County	388.24
Tyler County	821.67	Lewis County	600.00
Marshall County	1,192.34		
Ohio County	1,921.00		$13,795.44
Upshur County	232.85		

Table D, will show the amount received into the Treasury from Fines imposed by the Courts of the Commonwealth, and like the Capitation Tax, is a Fund for Educational purposes.

TABLE D.

Harrison County	$ 50.00
Ohio County	190.00
Mason County	6.00
Preston County	3.00
Wood County	10.00
	$259.00

Table E, will exhibit the amount paid into the Treasury, for Literary purposes, by the North Western Bank at Wheeling, on stock held by the Board of Literary Fund in that Bank.

TABLE E.

Dividends on 500 shares stock in North Western Bank, at Wheeling, Va.	$ 1,500.00

Table F, will exhibit the whole amount in the Treasury at the close of the fiscal year, 1862, subject to distribution for Educational purposes.

TABLE F.

Capitation Tax	$13,795.44
Fines imposed by Court	259.00
Dividends on Stock	1,500.00
	$15,554.44

The monies received into the Treasury for Literary purposes, are subject to distribution and apportionment under the 79th Chapter, page 416 of the Code of Virginia. The especial attention of the Legislature is requested to this Chapter and its provisions. It will be seen that by the 3d section of this Chapter, that the Auditor of Public Accounts is directed on the first day of January, in each year, upon the order of the Second Auditor, to set apart and pay into the

Treasury, to the credit of the Literary Fund for the purposes of Education, the amount of Capitation Tax received into the Treasury for the preceding year. The Second Auditor is then to apportion it out among the several Counties, Cities and Towns having Corporation Courts, under the provision of the 4th section of the same Chapter. The Second Auditor is to apportion it out by the white population of each County, City and Corporation of the State. Under this rule there would not be much for any County, and much the largest share would go to Counties, Cities and Towns of the Eastern part of the State, that have paid no part of the Fund into the Treasury. I think, therefore, the whole Chapter ought to be repealed.

Table G, will exhibit the amount received from the Banks of this Commonwealth, as a bonus, under provision of Chapter 59, page 348, section 48 of the Code of Virginia, and by that section, is a fund for the payment of the interest on the public debt of the State.

TABLE G.

Bonus from Bank at Fairmont	$ 269.87
Bonus from Merchants' and Mechanics' Bank, Wheeling	4,325.54
Bonus from North Western Bank, Wheeling	2,170.25
	$6,765.66

This section ought to be repealed and this money thrown into the Treasury, for while the law remains, the money arising from bonus now in the Treasury, or hereafter to come into the Treasury, cannot be made available for any other purposes.

Table H, will exhibit the money in the Treasury for Internal Improvement purposes.

TABLE H.

Dividends on 326 shares of Stock in the North Western Bank in the name of the Board of Public Works	$978.00

Table K, will exhibit the amount received from Militia Fines for the fiscal year 1862.

TABLE K.

Militia Fines for 1862	$134.87

At the regular session of the General Assembly of 1861-62, there was appropriated $5,000 to pay expenses of the Militia of the State. Under the appropriation, up to this date, over $3,000 have been paid to Drummers, Fifers, Adjutants, Mustering Officers, &c. The Legislature will see that only $134.87 have been received from Militia Fines altogether.

Under the late order of the Executive calling out the Militia of the State, there have been presented to this office large claims for services rendered under this order, as Drummers, Fifers and other charges, that the Auditor has been compelled to reject, there being no law authorizing the Auditor to pay them; many of these claims

amount to over one hundred dollars for one county. At this rate the sum necessary to meet these claims, if they are to be paid, will need not less than $10,000. It is a subject that the Auditor dare not venture an opinion upon, but hopes that the Legislature will give to it their proper attention.

Having furnished the Legislature with a true statement of the Finances of the State at the close of the last fiscal year, I now beg leave to call the attention of the Legislature to the necessity of some more legislation to enable the Auditor to have the Revenues of the State more properly collected. Without some additional legislation upon the subject, the Revenues of many of the Counties of the State will never be collected. The highest rates of commission now allowed to Sheriffs and Collectors of the Revenue, is 5 per cent. This is far too small a consideration for Sheriffs and Collectors, where there is no other business for the Sheriff and Collector to do. In many of the Counties it would not give the Sheriff or Collector over $150 or $200 for a whole year's work. The Legislature will see at once that an officer, competent to discharge the duties of Sheriff or Collector, cannot be obtained for so paltry a sum. Many of the Sheriffs and Collectors at work, are only temporarily engaged in the work under the promise from the Auditor that some provision would be made by the Legislature to increase their compensation, and unless the Legislature does increase their compensation, it will be impossible for the Auditor to hold them.

I would, therefore, as a matter of justice, recommend that the Legislature pass a provision increasing the compensation of Sheriffs and Collectors of the tax on Lands and Property throughout the State, to 10 per cent., where the sum collected does not exceed Ten Thousand Dollars, and where the revenue exceeds Ten Thousand Dollars, 7 1/2 per cent. To pass anything but a general law, would only involve the Auditor in trouble, for the Counties of the State are so unequal in the amounts collected, that it would be impossible to pass laws that would equalize the compensation.—Some Counties would pay the Sheriff or Collector more than others. But the great object to be kept in view, is the collecting and paying of the Revenues into the Treasury; it is for the Treasury and not for the Collector, that this recommendation is made. No injustice is done by General Laws: injustice would be done by passing laws for each County. The Sheriffs and Collectors of the State have been exceedingly prompt, under all the circumstances, in paying into the Treasury; and by a provision of law, such as I have recommended, the Auditor is convinced that in many of the Counties that are now paying nothing into the Treasury, Sheriffs or Collectors could be procured, but without some such provision no hope can be entertained of our getting the Revenue of those Counties collected. The Auditor therefore hopes that his promises, heretofore made to many of these officers now engaged in the collecting of the Revenues, will not be

denied them by the General Assembly. If the experience of the Auditor is worth any thing to the Legislature upon any subject, surely it is upon this, the most important of all his duties. I need not assure the General Assembly (for they all know) that the Auditor has labored most assiduously to collect the public Revenues and place them in the Treasury; and I ask the Legislature to pass the provision referred to and make it retrospective, so as to embrace the Revenue of 1862.

The Auditor would most respectfully call the attention of the General Assembly to a provision of law passed by them at the last regular session, Chapter 59, page 55, of the Acts of the General Assembly, passed February 15th, 1862. The law, (as it is short,) will be copied into this report, it is as follows:

Be it enacted by the General Assembly, That the expenses incurred in prosecutions for Misdemeanor, shall be chargeable to the Commonwealth.

The interpretation placed upon this law by Clerks, is that all the expenses incurred by them, such as issuing Subpoenas, Docketing Indictments, Continuance Cases, and such like, in cases of Misdemeanors, are chargeable, under this law, to the Commonwealth, and payable under this law. Many of the Clerks have demanded payment for services, such as above mentioned, of the Auditor.—Even the witnesses for the Defendants have claimed their attendance fees under this law. Fortunately, for the Auditor, the Legislature did not make any appropriation by which prosecutions for Misdemeanors could be paid. The law must be repealed or changed, so as to designate what expenses are meant. The clear presumption is that it only intended to embrace expenses incurred by the Commonwealth in prosecution, and not all the expenses incurred by the Commonwealth and the Defendants; but without some interpretation of the Legislature, this statute must give trouble to the Auditor. If it is the intention of the General Assembly that the Commonwealth is to be chargeable with all the expenses of witnesses, jailor's fees and other expenses, in drunken riots and peace warrants, the Auditor hopes the Legislature will so frame a law that will make it plain what charges are to be paid and what not to be paid by the Auditor.

The attention of the General Assembly is especially called to the Act of the General Asembly, passed February 10th, 1862, called the "Military Fund Bill." The first section provides that the Governor of the Commonwealth shall receive from the United States, the monies heretofore advanced by the State for military purposes, and place them to the credit of the State Treasury. Nothing has been received into the Treasury of the State from that fund. The second section provides that in addition to the monies so to be collected and placed to the credit of the State, as in the first section

provided for, the additional sum of Forty Thousand Dollars was appropriated to aid in the further organization, arming, transporting and supporting the military forces of the State, in the service of the United States, or that might hereafter be mustered into the service of the United States. Under this provision, the Executive has paid $11,507.69 since the regular session of the General Assembly. In the opinion of the Auditor, this law ought to be repealed. Surely there can be no use for the State to be paying bills belonging to the National Government, when she has here, at the seat of Government, an officer whose business it is expressly to provide for the support, arming, equipping and transporting of her own troops. While this law remains, it is only a temptation to persons who cannot obtain payment for their claims of the regular army officers, to hope for relief under this provision. And with all due deference to the Legislature, the Auditor would venture the opinion that $50,000 already paid in aid of this object by the State, and not likely to be returned again, is quite enough for the paying Counties of the State.

The Legislature will see that for Lunatics in Jail and Lunatic Asylum, there was paid during the last fiscal year, $6,930.18. The Lunatic Asylum at Weston, Va., being now nearly completed, ought to be furnished as rapidly as possible, so that the lunatics of the State might be better provided for than many of them now are, by being confined in some cell in the Jails of the State. A large number of the female lunatics of the State have been kindly provided for at the Lunatic Asylum, at Columbus, Ohio. The generous offer of the State of Ohio, to take the female portion of these afflicted of our citizens, and provide for them, is deserving the thanks of the Legislature. Without this provision, many of them must have suffered sorely, if indeed, death had not taken them away. The State can now afford to make ample provision for them, and it is to be hoped that the General Assembly will not omit this important duty to the afflicted lunatics of the State.

As a matter of interest, I herewith present a Table showing the several amounts paid by each of the proposed Counties of the New State, into the Treasury of the State. This Table is taken from the Report of Auditor J. W. Bennet, for 1859-60. This Table shows only the Tax on Land, Property, Capitation and Licenses. To this may be added, at least, One Hundred Thousand Dollars more, for Taxes on Banks, Railroads, Express, Insurance and other companies, which would give a grand total of at least Six Hundred and Twenty Thousand Dollars, paid into the Treasury of the State by the Counties of the proposed New State, in 1860.

Monongalia County	$ 21,211.61	Pocahontas County	$ 8,013.56
Hancock County	5,967.85	Kanawha County	25,827.92
Brooke County	8,838.03	Clay County	1,351.50
Ohio County	43,562.75	Nicholas County	6,286.24
Marshall County	14,388.68	Cabell County	14,050.44
Wetzel County	6,036.41	Wayne County	7,402.27
Marion County	18,956.80	Boone County	4,040.22
Preston County	14,252.13	Logan County	3,360.45
Taylor County	9,755.61	Wyoming County	2,473.31
Pleasants County	3,940.95	Mercer County	5,315.35
Tyler County	6,721.24	McDowell County	970.10
Ritchie County	7,642.86	Webster County	not reported
Doddridge County	4,946.32	Fayette County	6,682.98
Harrison County	26,339.69	Raleigh County	3,712.21
Wood County	20,684.65	Greenbrier County	28,662.74
Wirt County	3,411.71	Monroe County	27,680.59
Jackson County	10,155.98	Pendleton County	8,622.70
Roane County	4,573.07	Hardy County	20,128.07
Calhoun County	2,150.60	Hampshire County	26,253.63
Gilmer County	4,587.45	Morgan County	5,901.11
Barbour County	10,654.64		
Tucker County	2,147.18		$520,061.29
Lewis County	10,074.01	Add from Banks, Railroads, Express and other Companies of the State.	100,000.00
Braxton County	6,895.90		
Upshur County	8,583.82		
Randolph County	8,753.32		
Mason County	18,892.00		
Putnam County	8,600.64		$620,061.39

By reference to Table B, exhibiting the whole amount disbursed by the Auditor in the fiscal year, 1862, the Legislature will find the following items paid by the Auditor that do not properly belong to the ordinary expenses of the State, and in looking to a time of peace, will not be counted as part of the expenses of State to be provided for.

Table No. 1 will show the items referred to in Table B.

TABLE NO. 1.

Paid upon the order of the Governor for extraordinary purposes, as follows:

For Military purposes for the Government of the United States	$11,507.69
Civil Contingent Fund	16,884.86
Pay of Patrols of State	5,404.91
Pay of Lunatic and other Asylums of State	3,722.63
	$37,520.09
Appropriation for Lunatic Asylum at Weston	21,684.00
Appropriation for the Convention to frame Constitution of New State	16,399.25
	$75,603.34

Deduct this amount from the sum disbursed in the fiscal year, as shown by Table B, as follows:

Whole amount disbursed in the year 1862	$165,450.17
Deduct as stated in Table No. 1	75,603.34
	$89,846.83

Eighty-nine Thousand Eight Hundred and Forty-six Dollars and Eighty-three cents ($89,846.83) is the actual expenses of the State if reduced to a state of peace; and the amount ought to be still further reduced, when the Legislature remembers that during the past fiscal year there was one Regular and One Extra Session of the General Assembly. The Legislature will see by referring to the Table enumerated, that there was a little more than one-half of the money disbursed in 1862, paid for extraordinary purposes, and shows the actual expenses of the State, for the fiscal year ending September 30th, 1862, at only $89,846.83. It will be remembered that this expenditure was not alone for the counties in the proposed New State, but embraces payments made for Alexandria, Accomac and Northampton counties.

If these figures can be relied upon, and when it is recollected that only twenty-nine of the forty-eight counties of the proposed New State, have as yet, paid anything into the Treasury, is it not clear, that with the New State formed and peace restored, the taxes could be reduced one-half, and then produce more revenue than would be required for an economical administration of the State. And here let me state that there will be outstanding and uncollected, due the State from Sheriffs, Collectors, and other persons, of the Counties of the proposed New State, when the State shall have been formed, a sum of not less than $200,000. This, with the balance in the Treasury, will give a sum almost equal to the whole expense of the erection of the Public Buildings of the New State. In this connection permit me to call the attention of the General Assembly to the necessity, if a New State is formed, to some legislation necessary to vest the power in the Courts of the New State to recover the outstanding balances in the hands of Sheriffs, Collectors, Banks, Saving Banks, Railroad Companies, Express Companies, Insurance Companies, Notary Publics, Clerks of Courts, Bridge Companies, Toll Gathers, Superintendents of State Roads, Canal Companies, Escheators or Escheated Lands, and other property, within the boundary of the proposed New State; as also the right to receive dividends on stocks standing in the name of the Commonwealth, Literary Fund, or Board of Public Works, in Banks and other Corporations, within the New State; as also the power to control these stocks until a settlement can be had with the Old State. Would it not be well for the Legislature to repeal the Acts of May last, making an appropriation of One Hundred Thousand Dollars to the New State, and re-enact it, so as to avoid the last clause requiring the New State, in its settlement with the Old State, to account for the One Hundred Thousand Dollars. The money in the Treasury, out of which this One Hundred Thousand Dollars is appropriated, was collected from the Counties of the New State, and the Old State has

nothing to do with it. The settlement with the Old State ought to go back to the beginning of the rebellion, and settlement made from that time, if so, the New State is entitled to, and ought to have, not only the One Hundred Thousand Dollars, but all that shall be in the Treasury at the time of its admission. An Appropriation Bill to that effect ought to be framed. The money belongs to the Counties of the New State, and by any just rule, ought to remain with them. By this rule and with the uncollected balances due the State from Counties within the proposed New State, the New State would have the money ready to put up all of her Public Buildings, or nearly so.

The State has about Four Hundred Thousand Dollars worth of stock in the North Western Bank at Wheeling, standing in the name of the Commonwealth, part in the name of the Board of Public Works, and part in the name of the Literary Fund. The State has Fifty Thousand Dollars of stock or loan, in the name of the Literary Fund, in the Bank of Fairmont, and from Fifty to Seventy Thousand Dollars in the Exchange Bank at Weston, making about Five Hundred Thousand Dollars in all. She is also a stockholder in the improvement of the Kanawha river, how much, the Auditor does not know. The State is the owner of several important turnpike roads in the North-Western part of the State, and is a stockholder in many other turnpike and bridge companies. The power to control and use this stock, before and pending, the settlement with the Old State. Some legislation therefore, upon the subject, will be necessary.

Under the provisions of the Bill now pending before the Congress of the United States for the admission of the New State, the Convention that framed the Constitution for the New State, will have to again assemble, and it is respectfully submitted, whether the Legislature ought not to make a small appropriation to meet the expenses of that body while sitting.

All of which is most respectfully submitted.

SAMUEL CRANE,
Auditor of Public Accounts.

DEFENDANT'S GENERAL EXHIBIT NO. 6, A, B, AND C.

(Being Extract From the First Executive Journal of Governor Boreman, 1863.)

Special Message of Governor Arthur I. Boreman to the Legislature of West Virginia.

A.

Executive Department,
Wheeling, July 28th, 1863.

Gentlemen of the Senate and House of Delegates:

I have received from His Excellency, F. H. Peirpoint, Governor of Virginia, the enclosed communication and the accompanying report of S. P. Hildreth, Esq., on the subject of the Auditor's office and the state of the finances of the State of West Virginia at the time of the organization of the State of West Virginia, which I submit to you for your consideration and action. The report of Mr. Hildreth contains a statement showing as nearly as he could ascertain, the balance in the treasury on the 19th day of June, 1863, which is to be transferred to this State under the provisions of the Act of the General Assembly, passed February 4th, 1863: and also a statement showing the amount of money paid into the treasury by the counties of the State of Virginia outside the boundaries of this State, and the amount drawn therefrom for those counties, and the balance in their favor. The report also shows that some of the appropriations made by the General Assembly of Virginia have been overdrawn, and, as the money in the treasury after paying the appropriations, is the property of this State, it will be necessary for the Legislature to make an appropriation to meet the amount overdrawn, and thereby legalize what has been done. It will also be seen that many of the appropriations have not been exhausted.

It will also be seen from the communication of Governor Peirpoint, that there is a large number of claims against the State of Virginia, held by persons within the boundaries of this State, for the payment of which no appropriations have been made: and that there are no such claims held by persons in the remaining State of Virginia. As the balance in the treasury is to be transferred to this State, it may

become necessary to make provision for the payment of those claims due our own citizens, when they are ascertained. At present, I am unable to state their character or amount, but would suggest that the subject be referred to th proper committee to inquire into and report thereon, and the several sums that it is proper, should be paid out of the treasury in discharge of the claims referred to.

It will also be seen from the communication of Governor Peirpont, that he appreciates fully the difficulties that might occur in the absence of the books, papers, &c., of the Auditor's office, or of copies of the same, and, therefore, he proposes to leave those books, papers, &c., in the hands of the officers of this State for the present, but requests that you pass an Act directing that they be all delivered to the proper authorities of the State of Virginia, if they shall be demanded. He does not know that they will or will not be demanded. I recommend that such an Act be passed, and, in view of the contingency mentioned, and of the very great injury that must result to this State, if we should be left without those books, papers, &c., or copies of them, I recommend that provision be made to have copies of them made, in the event that they shall be called for by the proper authorities of Virginia.

By section 6th of the Act passed February 3d, 1863, page 65, of Acts 1862-1863, these books, papers, &c., were directed to be copied, and the copies to be delivered to the Governor of this State "when his election should be officially declared:" and I am informed that the appropriations of the same session of the General Assembly, included a sum sufficient, and was enlarged for the purpose (although not expressed) of copying the same.

But from some cause, unknown to me, the copies have not been made, and, of course, the money appropriated to pay for the same passes to this State by the Act transferring the balance in the treasury of the State of Virginia. The money intended to be used for this purpose thus remains in the treasury.

As these books, papers, &c., or copies of them, are needed almost daily for the purpose of ascertaining balances due from collecting officers, making settlements, &c., I hope the Legislature will take speedy action on this subject. I may say that had it not been that my attention, as well as the attention of the Legislature, has been given to military matters for a few days past, the necessity for which is known to all, this communication would have been made at an earlier day.

LETTER OF GOVERNOR F. H. PEIRPOINT, SENT TO GOVERNOR ARTHUR I. BOREMAN, AND BY HIM TRANSMITTED TO THE LEGISLATURE OF WEST VIRGINIA WITH HIS SPECIAL MESSAGE OF JULY 28, 1863.

B.

Wheeling, July 22d, 1863.

To his Excellency A. I. Boreman,
Wheeling, West Va.:

Sir,—By act of General Assembly of Virginia, passed February 3d, 1863, page 64, it is provided among other things, that all property and debts due the State lying within and owing from persons resident in the boundaries of the new State, should belong to the State of West Virginia, without further transfer. Provision is made also in the same act, requiring the Auditor of Public Accounts of the State of Virginia to procure fit blank books and transcribe therein true copies of all the records, &c., which may be useful to the State of West Virginia. These copies were to be certified by the executive and "**delivered to the Governor of West Virginia, when his election was officially declared,** for the use of said State of West Virginia." There was also an act passed on 4th of same month (page 68) appropriating one hundred and fifty thousand dollars to the State of West Virginia, and also the residue in the treasury after certain deductions therein named.

The Auditor and Treasurer of the State having resigned on the 19th day of June, 1863, it became my duty to appoint successors. I was informed that the copies of the records required by the General Assembly for use of West Virginia had not been made out by the Auditor of Public Accounts—nor had any statements of moneys received and expenditures made, &c., in accordance with the second section of last Act, been made, to ascertain the proper payment to be made to West Virginia out of the Treasury. I therefore directed the Treasurer and Auditor, by the assistance of Mr. Hagans, the Secretary of the Commonwealth, to examine the books, &c., of the Auditor's office and report to me their condition, with a view to ascertain whether any copies were needed of books and papers, &c. Also to ascertain and make statements in regard to the money in the treasury and sources whence derived, &c.

The Treasurer, S. P. Hildreth, furnished me the enclosed report, which I herewith send you.

I suppose it will involve the State of West Virginia in great difficulty to arrive at its rights, under the Acts of Assembly, above referred to, without the original books and papers for reference.

I find there is a number of claims against the State, held by persons in the bounds of the new State, which cannot be paid without further appropriation, the money appropriated, applicable to that subject, having been all expended. You will see from Mr. Hildreth's report the appropriations which have been overdrawn and the amounts. There is also a large number of accounts not audited, connected with the delinquent list and other papers, and with this is the unascertained school fund belonging to counties. (See report.)

There are but four counties in the State of Virginia from which any revenue has been derived. There are no unsettled claims from that sections that I am aware of. If there are any, I can have them arranged, if it is by further legislation. But as the money which is now in the treasury, derived from the counties in West Virginia, will be handed over to the treasury of the State, and as the officers cannot pay a portion of the claims without further legislation, and as it would subject the parties residing in the west to great inconvenience and delay to await legislation in Virginia, and then bring their claims there for payment, it occurs to me that this business should all be settled here by such legislation as may be necessary. Mr. Hildreth states that some of the delinquent lists are not returned, and others incorrect. It occurs to me that there might be difficulty on the part of the State of Virginia, now that the State is divided, to enforce the returns, &c., that may be necessary to settle the accounts with the different counties in regard to the literary fund derived from capitation tax.

I am anxious for the welfare of the new State of West Virginia. I desire to furnish the greatest facilities for securing her interests, and in view of that, I propose to leave the books, papers, &c., with you for reference and settlement, asking that your Legislature will pass an Act directing that they all be delivered to the proper authorities of the State of Virginia when demanded. They may be demanded and may not. I have no authority to say that they will not.

With sincere desire for the future welfare of your new State of West Virginia,

I am yours, &c.,

(Signed) F. H. PEIRPOINT.

Governor.

STATEMENT MADE TO GOVERNOR FRANCIS H. PEIRPOINT BY MR. SAMUEL P. HILDRETH, CONCERNING THE FINANCIAL TRANSACTIONS BETWEEN THE NEW STATE OF WEST VIRGINIA AND THE COMMONWEALTH OF VIRGINIA, JULY 14, 1863.

C.

Wheeling, W. Va., July 14, 1863.

His Excellency F. H. Peirpoint:

Dear Sir,—In accordance with your request, I would respectfully report that, with the assistance of Messrs. L. A. Hagans and Dr. Webb, I have examined the papers, vouchers, and memorandums of accounts kept in the Auditor's office of the Commonwealth since the restoration of the Government.

In a book called "Sheriff's Accounts," we found where the amount of taxes reported annually by Commissioners of the revenue were charged to the Sheriffs of the Commonwealth, we compared the Land and Property Books with the accounts as charged, and found the following errors:

Sheriff of Brooke county is overcharged tax on town lots, in 1861, $21; Sheriff of Putnam county, overcharged tax on town lots, $252.80, in 1861; Sheriff of Jackson county is charged tax on personal property, $754.98; it should be $2,241.07; Sheriff of Upshur county is charged tax on personal property for 1862, $506.27; it should be $2,552.50. This Sheriff, according to the account, had paid his indebtedness to the State, and his account has been closed.

Sheriff of Gilmer county is charged tax on lands, $3,093.16; it should be $3,039.16.

Sheriff of Kanawha county is charged tax on town lots, $9,078.94; it should be $1,456.32, and $3, in same account, an undercharge in tax on personal property. For some of the accounts we could not find any land books or property books to compare with.

We next examined a book called "License Book" in which was charged the taxes on licenses. In this we also found some errors, the largest of which was $20, and we concluded to take no account of them.

Next came a book (without any index) called "Railroads, Banks, Express and Insurance Companies," in which was charged the taxes on dividends; in this we found that on the 14th of March, 1863, the Sheriff of Ohio county collected from three Institutions (here in the city) taxes amounting (less his commissions) to $866.59. The whole amount was credited to each of the institutions, in addition to which they were credited with commissions, 5 per cent.

While on the subject of licenses, we omitted to mention that in some instances the Sheriffs owed largely for 1861, while they were over credited for 1862. The proper plan, we think, would have been to have made the Sheriffs pay all that they owed for one year before crediting them anything for the taxes of a subsequent year.

We have no doubt that a number of the accounts in both the sheriffs and license tax books could be closed if they were credited with their delinquent lists and commissions. It is true that owing to the disturbed state of affairs in the State, a number of delinquent lists have not been sent to the office, and it is also true that those which have been sent are not properly credited. After a great deal of patient examination we failed to understand the subject of delinquent lists. In some instances we found them credited to the account, direct, while in others the accounts were credited with the Auditor's warrant for the amount, which was charged to an appropriation called "Erroneous Assessments and Delinquent Tax," in a book called "Journal," (we could find no such appropriation,) whether or not this is the correct plan we are not unable to say.

In a book called "Journal" to which we have referred, we found the amount in the Treasury on the 1st October, 1862, to have been	$120,159.01
Amount received since that time to 19th June, 1863	252,529.71
Total	$372,688.72

Out of which the following have been paid:

Salaries of Officers of Civil Government	$ 6,264.10
Salaries of Judges and Atty's for Commonwealth	12,091.71
Contingent Expenses of Court's Commonwealth	1,635.65
Criminal Charges	8,078.24
Civil Contingent Fund	17,052.57
Militia of State	1,785.45
Lunatics in Jail	3,126.73
Public Printing	1,626.11
Patrols and State Volunteers	134.00
Expenses of Auditor's and Treasurer's Office	1,469.74
Expenses of Secretary and Adj't General's Office	105.68
Contingent Expenses Adj't General's Office	430.67
Pay of Auditor's Clerks	900.00
Pay of Adjutant General's Clerk	374.97
Pay of Treasurer's Clerk	100.00
Pay of Adjutant General	862.27

Pay of Janitor of Executive Offices	225.00
Expenses of Elections	33.82
Coroner's Inquests	70.85
Military Purposes	1,144.03
Lunatic and other Asylums	2,377.83
Erroneous Assessments and Delinquent Tax	1,650.54
Miscellaneous Appropriations	518.05
Expenses of General Assembly 4th December, 1863	18,322,67
Expenses of Board of Public Works	6.50
Expenses of Convention 26th November, 1861	25.00
Expenses of Convention 12th February, 1863	7,000.00
Special Appropriations	1,146.91
Expense of Collecting Arms	86.30
Weston Lunatic Asylum	40,000.00
Educational Purposes	11,984.72
Commissioners of Revenue	6,778.58
	$147,408.89
Balance in Treasury 20th June, 1863	$225,279.83

Which is deposited in the following banks:

North Western Bank, Wheeling	$ 94,785.59
North Western Bank, Parkersburg	27,776.62
North Western Bank, Wellsburg	9,399.80
Merchants and Mechanics Bank, Wheeling	79,002.35
Merchants and Mechanics Bank, Clarksburg	7,271.16
Merchants and Mechanics Bank, Morgantown	7,044.55
	$225,280.07

Observe a difference of 24 cents between the amount in Bank and what there should be. We hunted for the cause of the difference, but were unable to find it.

The following appropriations are overdrawn:

	Amts. paid.	Appropriated.	Overdrawn.
Judiciary	$12,091.71	$10,000.00	$2,091.71
Criminal Charges	8,078.24	6,000.00	2,078.24
Lunatics in Jail $3,126.73			
Lunatics other Asylums 2,377.83			
	5,504.56	5,000.00	504.56
Public printing	1,626.11	1,500.00	126.11
Expense of General Assembly	18,322.67	17,000.00	1,322.67
			$6,123.29

In the appropriations of Salaries of Officers of Civil Government an item appears. Voucher No. 945, S. Crane's salary is charged $466.66, which is an error; it should be $441.95. He has overdrawn $24.61. In pay of Auditor's Clerks, Vouchers No's 948 and 949, it appears that both the Auditor's Clerks have been paid from April 1st to July 1st, 1863, overdrawn in one case, $22,23, and the other, $11.12. The following table will show the amount yet unexpended of the different appropriations:

	App.	Expended.	Balance.
Salaries officers Civil Government	$12,500.00	$ 6,264.10	$6,235.90
Contingent expenses Courts Commonwealth	5,000.00	1,635.65	3,364.35
Commissioner's Revenue	10,000.00	6,778.58	3,221.42
Civil Contingent Fund...$15,000.00			
Credited by Gov. Peirpont 2,630.43			
	17,630.43	17,052.57	577.86
Contingent expenses Auditor and Treasurer's Offices	2,500.00	1,469.94	1,030.96
Pay Auditor's Clerks	1,500.00	900.00	600.00
Pay of Adjutant General's Clerk	625.00	374.97	250.03
Janitor Executive Offices	400.00	225.00	175.00
Pay Treasurer's Clerk	200.00	100.00	100.00
Expenses of Elections	200.00	33.82	166.18
Coroner's Inquests	100.00	70.85	29.15
Pay of Adjutant General	1,200.00	862.27	337.73
Expenses taking care of arms	1,000.00	86.30	913.70
Contingent exp. Adjt. Gen. Office	500.00	430.67	69.33
To defray expenses of sick and wounded soldiers	2,000.00	.....	2,000.00
Vaccine Agent	500.00	.....	500.00

The amount received from the counties outside the State of West Virginia is as follows:

From Alexandria County	$16,920.91
From Accomac County	6,370.28
From Fairfax County	219.75
From Northampton County	1,063.65
	$24,574.59

Paid out in same counties:

Members General Assembly	$4,501.60	
Convention August, 1861	128.00	
Salary Judge Circuit Court	2,675.90	
Lunatics	4,420.69	
Commissioners Revenue	1,332.75	
Courts	98.00	
Criminal charges	1,479.79	
		$14,636.73
Receipts over expenditures		$ 9,937.86

It would require too much time to endeavor to ascertain the amount set aside by law for educational purposes, (which is the capitation tax,) as it would necessarily involve another examination of delinquent lists, and we doubt very much that it could be ascertained correctly. There has been no capitation tax account kept in the books. In conclusion we would say that if the Legislature of West Virginia would pass an Act by which you could get possession of them whenever you require it, we would deliver the books to the Executive of West Virginia, so that the accounts in them might be properly settled, for they can be of no manner of use to you unless they were demanded by the General Assembly of Virginia hereafter.

Very respectfully,

(Signed) S. P. HILDRETH.

Other Evidence and Proceedings Relating to the Several Paragraphs of the Decree and the Case Generally.

[*Vol. 1. Nov. 16, 1908. Plan for marking Exhibits.*]

The Special Master: I will mark the first paragraph of the decree A, the second B, and so on. So I will say the first exhibit offered will be "Plaintiff's Exhibit A 1", and the one that is now offered will be "Plaintiff's Exhibit B 1", B representing the second paragraph. 56

[*Vol. 1. Nov. 16, 1908. Procedure as to objections.*]

The Special Master: Let me see if I get this right. I understood Attorney General Anderson to state that they were willing to agree to adopt a suggestion made by Mr. Spooner with reference to the time when the objections should be finally settled and passed upon, but they would much prefer as we go along for you to 13
make such salient objections as occur to you, without stopping to discuss them, so that they might be in a way advised, but not foreclosing you from raising other objections, and leaving all the objections to be finally passed upon. Do I get your meaning correctly?

Mr. Anderson: That is satisfactory. That is a fair statement of our position.

Mr. Spooner: Then I did not understand the gentleman.

The Special Master: I suppose the idea of the Attorney General is that if there is something that it is quite obvious ought to be objected to, they ought to have your objection at the time, in order to save time and make progress, because they might pursue another course if they knew a certain thing might be objected to which was obviously inadmissible. Do I state it correctly? 14

Mr. Anderson: Yes; that is satisfactory.

The Special Master: Then we will have that understanding, that the case may go on and evidence may be introduced by either party to be subject to all objections, objections to made *de bene* so far as they may occur to counsel as they go along, but not to be argued or discussed, though perhaps the grounds should be set forth; that the making of an objection of that sort is not to foreclose either party making any objections they may have to make ultimately, the ques-

tion of objections to be passed upon later by the Master with the understanding that if testimony is excluded coming from either side, such side will be given fair opportunity to submit other evidence bearing upon that same point, as they may be advised is necessary in order to protect their rights. Either party or both parties will have full opportunity to bring into this case any evidence that has any legitimate connection with it or any legal bearing upon the issues, that is, within reasonable limits. Now, does that state the understanding satisfactorily?

[*Vol. 1. Nov. 16, 1908. Plaintiff's Exhibit H-1. Auditor's Report 1860-1861.*]

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TESTIMONY ON BEHALF OF THE COMPLAINANT.

In reference to Exhibit H 1.

Mr. Conrad: We now offer in evidence, if your Honor please, the biennial report of the Auditor of Public Accounts for the years 1860 and 1861 of the Commonwealth of Virginia. It was transmitted by the Auditor of Public Accounts to the Governor in November 1861. It gives the statement by counties, each county in the state, and a summary at the close, showing the number of square miles, the personal and real property, the number of slaves taxed, and so on.

Mr. Mollohan: Whose Auditor was he?

Mr. Conrad: He was a native of West Virginia, and perfectly loyal to Virginia and to the Confederacy until that calamity occurred in 1865. Then he returned to the State of West Virginia which had become a state in the meantime and became just as loyal to West Virginia as he had been to Virginia; and he appeared on behalf of West Virginia and made another report of this very debt, some years later. That is as much of his biography as I think appropriate to the submission of this book and the suggestion of my brother.

Mr Mollohan: At the proper time, we expect to object to the book.

Mr. Conrad: Do you object to the book now? It is an official publication.

Mr. Mollohan: We object now, because he is nobody's Auditor.

The Special Master: The book is admitted, subject to objection, under the agreement we have already entered into; 86
and if the counsel for West Virginia see fit at this time to indicate in a general way the character of their objection, it is perfectly open to them to do so. That will give notice to the other side.

Mr. Mollohan. We rely on a number of documents which we will present at the proper time.

The Special Master. Very well; it is admitted *de bene*, according to the understanding.

Mr. Anderson. I do not suppose you object to this as being the Auditor's report, but you object to the Auditor's report being competent evidence.

Mr. Mollohan. No; he was no Auditor.

Mr. Anderson. He was the Auditor of the Richmond Government, which our friends claim was only a *de facto* government of Virginia at that time, but still it was a government. The Supreme Court of the United States has decided it was a government.

Mr. Mollohan. This was before the State of West Virginia was formed.

Mr. McClintic: Samuel Gray was the Auditor of Virginia at that time.

Mr. Anderson. A portion of this is the Auditor's report for 1860, when he was the Auditor of the undivided State of Virginia.

Mr. Mollohan. Not in 1861.

Mr. Anderson. Part of this is for 1860. These items here are for 1860, the ones we rely on chiefly, when he was undoubtedly the Auditor of the undivided State. 87

Mr. McClintic: He was only a private citizen, making a report.

Mr. Anderson: Not in 1860.

Mr. McClintic: He did not make the report until 1861.

The Special Master: I suppose the significance of the information depends upon whether or not you both agree upon the facts as stated. If you disagree, then the question comes as to what is the best evidence of the facts.

Mr. Mollohan: We disagree as to this statement. He has our counties all wrong. If you take the map to-day and measure it, you will see it is wrong. He evidently arrives in that book at his area by taking the acreage of land and supposing that every acre charged represented an acre of territory. Our land is charged sometimes three and four times over.

The Special Master: All those suggestions will be entitled to weight, so far as they have weight in impeaching the validity of any computations that may be made.

Mr. Spooner. I was not trying to impeach the witness.

The Special Master: I understand. I remember now the allegations of the bill, and of course the facts stated are quite diverse.

Mr. Anderson: I do not think there will be any controversy between us as to the area. It is a question that cannot be accurately determined from those records. It can only be approximated. The witness took it from the best sources of record he could find.

The Special Master: This will make a start on it, anyway.

Mr. Spooner: Here is a map of West Virginia, prepared by the Auditor of Virginia before the State was divided. It gives the number of square miles of the old State of Virginia as 61,352 square miles. 89

Mr. Anderson. West Virginia is only 24,000 square miles instead of 45,000.

The Special Master: That book will be marked, "Plaintiff's Exhibit H-1".

(The book referred to, entitled, "Biennial Report of the Auditor of Public Accounts, 1860 and 1861," is filed herewith, marked "Plaintiff's Exhibit H-1.")

Mr. Robinson: That has evidence in it on all the paragraphs of the decree.

Mr. Anderson: If the Master please, we have no further evidence to offer at present on behalf of Virginia.

[*Vol. 6. May 7, 1909. Defendant's Balance Sheet of Receipts and Disbursements.*] 575

Mr. McClintic: If your Honor please, I wish to make a short statement. We desire to file, as soon as we get the copies here—and we expect to have them ready by noon today—a statement of all the cash receipts and disbursements of the State of Virginia from March 19, 1823 to January 1st, 1861, beginning with the balances that stood in the various funds on the books of Virginia March 19, 1823; the total of which shows $85,002,130.72. Then we have the counter part of that. I spoke of receipts and disbursements; I should have said those figures represented the receipts. Then we want to show the disbursements from March 19, 1823 to January 1st, 1861, having of course the same balance, a general detail of all those things. This copy that I have here is a preliminary copy. As I have said, we will have complete and correct copies here, probably by 12 o'clock. 576

The Special Master: In what way will that affect the schedules already put in?

Mr. McClintic: We want to show by that the character of the examination made by Mr. Dixey and his assistants in this case, that he took up each item from books of original entry, beginning March 19, 1823 and running to January 1st, 1861, and this is the complete balanced account which shows, as they say in accountants' language, control of the figures during that time.

Mr. Anderson: I do not understand that this paper Mr. McClintic has referred to has been introduced in evidence.

Mr. McClintic: Not yet; but we will introduce it as soon as the copies of the same, to which I have referred, arrive. I have simply been making a statement from this copy that I have.

Mr. Anderson: We have not seen it and of course we reserve the right to object to it.

The Special Master: But there is no objection to his making the statement?

Mr. Anderson: Not at all. We simply reserve our rights.

By Mr. McClintic:

Q. Please look at this paper and state what it is (handing witness paper).

A. I am holding a carbon copy of the statement prepared by me and under my direction, showing balances of the various funds March 19, 1823; the total receipts of the Commonwealth of Virginia from that date to January 1st, 1861; the total disbursements from March 19, 1823, to January 1st, 1861; and the cash balances in the various funds at the end of that period; together with the supporting schedules showing the details of those receipts and disbursements. 577

Q. Does that account show an absolute balance between the receipts and disbursements?

A. Yes, sir.

Q. And you believe it to be absolutely correct?

A. I have verified it, yes.

Mr. McClintic: We will offer it, then, as soon as we get the copies.

[*Vol. 6. May 7, 1907. Nature and Effect of agreement between accountants.*] 726

Mr. Spooner: Your Honor has suggested that these accountants get together and reconcile differences. I suppose that means mathematical differences?

The Special Master: Certainly.

Mr. Spooner: That does not go to any principle?

The Special Master: Not at all.

Mr. Spooner: And if they cannot agree on mathematics, then it will be referred to you. 727

The Special Master: The suggestion is this. The way these accounts have been stated, there are a good many items, which, in the first place, do not appear to be quite identical. In the second place, there seems to be some controversy as to the amount. Now,

the great bulk of those things, I suppose, if the accountants get together, can be reconciled and agreed upon, so far as they are able to agree upon them. That will eliminate them as subjects of controversy in the various schedules. So far as they can not agree upon them, I will hear the controversy as to those particular items, and of course pass upon the question of amount myself.

Mr. Spooner: That is where the items are identical, while they differ in total?

The Special Master: Yes; but so far as the principle involved that underlies either schedule or anything the accountants submit is concerned, there is nothing the accountants will do between themselves that will bind the parties, so far as I am concerned.

Mr. Spooner: Before you decide at all any of those things, either party will be heard.

The Special Master: Absolutely; yes. I will hear you in regard to everything in controversy between the parties, involved in every schedule.

Mr. Spooner: That is what I assumed.

The Special Master: Certainly; the parties are to be heard. The only purpose of the accountants getting together is to eliminate elements of controversy in detail. Of course we could 728
sit here and try out each individual difference, but that would be interminable, and entirely unnecessary if the accountants between themselves can agree.

[*Vol. 7. July 2, 1909. Introduction of Official documents into evidence.*]

Mr. Moon: At that meeting in New York I understand we 1016
are to be allowed to introduce official documents that have a bearing—

The Special Master: Each party will be allowed to introduce anything that is not already in; but the auditor's books are in the case already, the acts of assembly are in, and all official records are in, as I understand it. All the acts of West Virginia and Virginia that have any relation whatever to any part of this controversy, are a part of this controversy and will be in. Does that cover your ground?

Mr. Moon: I am not sure that they are all in.

Mr. Harrison: I do not know that we have referred to all of the auditor's reports.

The Special Master: I will say this. Now, after looking the case over, after the case is printed, if either counsel discovers that

they have left out anything that is important, I will re-open the case and give them an opportunity to put it in. I appreciate, of course, that we have gone very rapidly here to-day, and it may possibly be that counsel have inadvertently overlooked something. I do not say that I will open the case for any thing trivial, and of course counsel would not ask that, but if there is something of importance that you find you ought to be heard on and ought to have evidence on, the case will be opened, and you will be given an opportunity to be heard. That may be a little unusual, but I think that is the proper thing to do in a controversy of this magnitude. So you need not either of you feel that you are by any inadvertence prejudicing either side. Is that agreeable to both of you?

Mr. Anderson: Yes, sir.

Mr. Conley: Yes, sir. 1017

Mr. McClintic: It applies to both sides?

The Special Master: Certainly; it applies to both sides.

[*Vol. 1. Nov. 16, 1908. Direct Examination of A. G. Potter. His qualifications.*]

TESTIMONY ON BEHALF OF THE COMPLAINANT.

Under Paragraph 1 of the decree.

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ARTHUR G. POTTER,

was called as a witness for the complainant, and being duly sworn by the Special Master, testified as follows:

By Mr. Anderson:

Q. What is your professional occupation, Mr. Potter?

A. Public accountant.

Q. State how many years experience you have had as a public accountant.

A. Eight years.

Q. What has been the character of that experience and how extensive has it been?

A. It has extended over general mercantile accounting mat- 27
ter, manufacturing and financial.

Q. Have you done work of that kind in connection with litigated cases?

A. I never did.

Q. Have you any diploma or certificate or license of an official character from any government?

A. I have a certificate of the Regents of the State of New York, making me a certified public accountant.

Q. What are the requisites for granting that certificate? Is there any examination made of the party?

A. There is an examination in the theory of accounts, practical accounting, commercial law, and auditing—four subjects.

Q. Have you had experience, and if so what, in auditing accounts of corporations, firms or individuals?

A. I was an auditor for five years prior to entering the duties of a public accountant. Since that time my work has been of a general public accounting nature, which includes auditing as well as other lines of accounting work.

Q. Please state to the Master whether you have made any investigation—

The Special Master: Just one moment, Mr. Anderson. I do not know whether the counsel for West Virginia raise any question as to the qualifications of the witness. If they do, it will be open to them now, I suppose, to cross examine Mr. Potter upon that point. I do not know that they will raise any question.

Mr. Spooner: No.

The Special Master: You may proceed, then. 28

By Mr. Anderson:

Q. Have you made up any statements or accounts relative to the matters in controversy between the Commonwealth of Virginia and the State of West Virginia in this cause?

A. I have.

Q. How long a time have you devoted to those investigations, and to that work?

A. Approximately seven months and a half.

Q. Did you have assistants in the conduct of those duties?

A. I did.

Q. Were they trained accountants?

A. Yes, sir.

[*Vol. 4. May 5, 1909. Cross Examination of A. G. Potter. Methods and Sources.*]

ARTHUR G. POTTER, 213
resumed the stand for
Cross Examination.

By Mr. Carlisle:

Q. Mr. Potter, you are the accountant who made the accounts for the State of Virginia in this matter?

A. I am.

Q. Will you state about how long you were engaged in that work; —actively engaged?

A. About seven months and a half. I have not the exact length of time, but about seven months and a half. 214

Q. Do you mean you were actually engaged in the work about seven months and a half, or that it was seven months and a half from the time you began until the time you quit?

A. No, sir; seven months and a half actual work.

Q. Not continuously, as I understand, but counting the time that you were actually engaged it makes seven months and a half?

A. Yes, sir; we started on the 1st of February and completed our work at the time of the first hearing, with one or two months intervening that we did not work.

Q. From what sources did you procure the information which you embodied in your report?

A. As to the board of public works, from the board of public works' published reports, and later checked those with the internal improvement books, the original manuscript books.

Q. All of them?

A. All of them.

Q. All of those accounts?

A. Yes, sir.

Q. From what sources did you get the other accounts, excluding now the accounts of the board of public works?

A. The Commonwealth accounts we took from the published reports of the treasurer, and the auditor of public accounts, and verified some of them from the original records.

Q. About what proportion did you verify from the original records?

A. Well, if we had occasion to get further description as to roads, internal improvements companies, &c, we referred to 215 the original books. Otherwise we took the accounts of the treasurer and auditor of public accounts.

Q. What proportion of those accounts, as nearly as you can state, did you ascertain by an examination of the original books?

A. We ascertained the amounts paid in by the counties of West Virginia entirely from the original manuscript books. The items of ordinary expenses of government, we took from the published reports?

Q. Did you go to the books of original entry for all the items which are included in the debits and credits to West Virginia?

A. Yes, sir.

Q. What books do you mean?

A. The ledgers and day books of the auditor of public accounts, in which there were accounts with sheriffs, coroners, clerks and so forth.

Q. From what source of information did you get the data which you put in the ordinary expenses of State government?

A. The published reports of the auditor of public accounts.

Q. From what source did you procure the information embodied in your report concerning the amounts expended in West Virginia?

A. The reports of the board of public works and the original manuscript books, as I have explained before.

Q. What proportion did you procure from the published re- 216
ports, and what proportion, as nearly as you can state, from the original books?

A. I believe I have testified that we verified all the figures we took from the published reports by the manuscript books.

Q. What do you mean by manuscript books?

A. The books of original entry.

By the Special Master:

Q. The books on file in the State Department?

A. Yes, sir; as to the auditor's office.

Q. Of the Commonwealth of Virginia?

A. Yes, sir; as to the auditor's office.

By Mr. Carlisle:

Q. Did you examine the ledgers and journals, or only one?

A. The ledgers and the journals.

Q. You examined the journals?

A. Yes.

The Special Master: Let him state, Mr. Carlisle, what books were kept at that time.

Mr. Carlisle: Yes; I was going to come to that.

By Mr. Carlisle:

Q. Will you state now what books were kept and what books you found among the public archives of the state?

A. There was ledger A and ledger B of the board of public works, and the journals that went with them. I think there were three journals for those two ledgers. There were two or three ledgers of the literary fund, I don't recall which. I think there were three, and the journals that went with those. There 217
were the books of the James River Company, ledger and journal, the books of the Northwestern Turnpike Company, ledger, journal and minute books, the books of the James River Company, ledger, journal, minute book and an old minute book which was not filed in the library, but which I found in the top of the Capitol building here, and the ledger, journal and minute book of the Covington & Ohio Railroad. I believe those are all the books.

Q. What other books of original entry, if there are any, did you examine?

A. Ledgers and day books, I believe, and journals in the office of the auditor of public accounts.

Q. Did you examine all of them?

A. I think we examined all of them; yes, sir.

Q. Did you examine all you could find? What do you mean when you say you think you examined all of them?

A. We examined all the books that were necessary to find the receipts from the various counties during the period under review. I think they embraced all of the books in the office of the auditor of public accounts.

Q. There were no original books there except those which showed the receipts from the original counties. Is that what you mean to say?

A. I don't understand your question.

Q. Do you mean to say you found no books there of original entry, or examined no books of original entry, except those books which showed receipts from various counties?

A. These same books showed disbursements, many of them, 218
but as I testified before, we examined the books of the auditor of public accounts for the purpose of ascertaining the amounts paid by the counties into the public treasury.

Q. What counties?

A. The counties of Virginia and West Virginia.

Q. You see, Mr. Potter, I think you misunderstand the scope of my question. I am asking you not what books you examined with respect to any particular matter, or any particular account. I want to ascertain from you, if I can, all the books of original entry which you examined—about what proportion of them, putting them all together.

A. I believe we examined them all in both the office of the auditor of public accounts and the second auditor's office. In other words, we covered the entire bookkeeping system for the period.

Q. Did you afterwards balance your accounts, balance everything, to see whether you had examined all the entries as to receipts by the state during that time, and all the disbursements of the State during that time, and whether they balanced or not?

A. We did make such a balance.

Q. Have you that balance?

A. I haven't it with me; no, sir.

Q. Did you submit it with your report?

A. No, sir.

By the Special Master:

Q. You have it in your notes?

A. Yes, sir.

Q. Are the notes here in Richmond? 219
A. Yes, sir.
Q. But not present here in court?
A. No, sir; I haven't them with me. They are in the library.

The Special Master: Do you wish those produced?
Mr. Carlisle: Yes.

By the Special Master:
Q. Will you produce them after the intermission today?
A. I would like to have a copy made of them. I have only one copy of the balance.

By Mr. Carlisle:
Q. Have you any memorandum showing the books of original entry you examined?
A. No, sir.
Q. You did not make any memorandum?
A. No, sir.
Q. Have you any memorandum showing the printed official reports which you examined?
A. Showing the what?
Q. The printed official reports you examined?
A. We examined all of the printed official reports of the board of public works, of the Commonwealth and of the literary fund.
Q. Will you tell us how you know you examined them all?
A. By starting in with the figures with which, for instance, the board of public works started, adding the total receipts for that year, deducting the disbursements, and arriving at a new balance at the end of the first year. Taking that balance, we added the receipts for the second year, deducted the disbursements, and ar- 220
rived at a new balance for the second year. Taking that balance, we went to the third year, and so on during the forty years.
Q. That is not shown in your report?
A. No, sir; that is the balance statement I have referred to.

By the Special Master:
Q. You have that on your notes?
A. Yes, sir.
Q. You had better have your notes here in the afternoon, so that if they have occasion to inquire about them, you can produce them without delay.
A. Yes, sir.
Q. Could you send for them now, Mr. Potter, without any trouble?
A. No, sir; my assistant does not know where they are.
Mr. Carlisle: We would like to have them.
The Special Master: Get them during the intermission.

Mr. Conrad: He can get them in twenty minutes.

The Special Master: Do not suspend for that purpose now. He can get them during the intermission and have his notes here with him. Counsel on both sides had better keep that in mind, and have their original notes here, so that if any question arises about the notes, that can be produced without any delay.

By Mr. Carlisle:

Q. When you examined the published official reports, did you find a detailed itemized statement of receipts and expenditures in those books? 221

A. It was somewhat summarized. It was not a detail statement.

Q. Somewhat summarized? What do you mean by that?

A. Well, the criminal charges for one year were given in one item for the whole year.

By the Special Master:

Q. Do you mean for the whole State?

A. Yes; for the whole State?

By Mr. Carlisle:

Q. Now, take that item, for illustration. Did you itemize that item by reference to the books of original entry, to see whether it was correct or incorrect?

A. We did not.

Q. Was that the only item you found on the official reports summarized in that way?

A. There were other items of general expense, such as court charges, the penitentiary charges, and such things as that.

By the Special Master:

Q. They were lumped instead of being summarized, as I understand?

A. There was one total for each year in the published reports.

Q. They aggregated the year instead of giving the details?

A. Yes, sir.

By Mr. Carlisle:

Q. When you found that to be the case in regard to any other official report, did you simply take that total as stated there and include it in your account, or did you analyze that item to see that it did cover? 222

The Special Master: To get at the details from which it was made?

By Mr. Carlisle:

Q. Yes; to get back to the original source?

A. No, sir; we did not.

Q. Did you do that in any case?

A. We did that with respect to the board of public works expenses. We analyzed all the board of public works expenses.

Q. How about the literary fund?

A. Not the literary fund.

Q. How about the Commonwealth fund, as it was called?

A. No; we did not analyze the details of those general headings.

Q. There were very large expenditures which you have included in your account under those?

A. There were.

Q. And very large as to all these others you speak of?

A. Yes; they were very large.

[*Vol. 5. May 6, 1909. Direct Examination T. B. Dixcy. His Qualifications and Methods.*]

THOMAS B. DIXCY,

produced as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

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By Mr. Carlisle:

Q. What is your occupation or profession?

A. I am a professional accountant, a certified public accountant, under the laws of the State of New York.

Q. How long have you been engaged in that business?

A. I have been actively engaged in professional accounting since 1900, as an active professional accountant.

Q. What were you doing before that time; were you an accountant?

A. Not a professional accountant. I have been an accountant all my life; yes; but not a professional accountant; not practicing personally.

Q. State, in a general way, what your experience as an accountant has been?

A. I have been manager for Haskins and Sells, an accounting firm of New York. I left them in order to go in a special capacity with the Delaware & Hudson Company of Albany, to take charge of their accounting department and do special work. I returned to professional accounting after leaving the Delaware & Hudson Company and have practiced it since. I was in a professional capacity with the Delaware & Hudson Company, but not generally. 467

Q. State whether or not you have made any examination of

the accounts in the States of West Virginia and Virginia under the decree of the Court.

A. I have, sir, made such an examination.

Q. How long a time were you engaged in that?

A. We have been engaged in it for approximately 15 months. It will be 15 months the middle of May.

Q. In what way did you ascertain the items in the charges and credits?

A. We took the books of original entry in the Commonwealth of Virginia in all cases where such books of original entry were in existence. They were in existence without any commission so far as this account was concerned, but we had reference to other books in reference to the examination and the accounting.

Q. Did you examine any public papers and documents in connection with the accounts?

A. All such papers and documents as had reference to the information that was required under the decree.

Q. State to the Court whether you and your assistants personally examined the items upon the books of original entry which entered into your accounts?

A. Yes; we went directly to the books of original entry.

Q. About how many items do you think you examined?

A. I estimated in round numbers;—and carefully estimated. 468
it was not a guess—about 750,000.

Q. And you took them off the books, did you?

A. Yes; we took them off our books. They are tabulated in what we call our working papers.

Q. And you have what you call your working papers?

A. Yes, sir.

Q. How many men did you have with you?

A. I had from five to nine.

Q. That many all the time?

A. All the time; varying between those numbers.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy. Methods and Sources.*]

Cross Examination.

By Mr. Harrison:

Q. I understood you to say that you were the professional 579
accountant, who had charge of the investigation of records here for the State of West Virginia?

A. They were made under my supervision and direction, yes, sir.

Q. And you say you occupied in the performance of that work approximately sixteen months?

A. Fifteen months, I think I said. It will be fifteen months the middle of this May.

Q. You began when?

A. We began the 14th of February. 580

Q. And concluded when?

A. The men are still here. They are working on some of the details now; but we turned in our last schedule completed, I think, on May 3rd.

Q. May 3rd of this year?

A. Of this month, yes, sir.

Q. And you began in February, 1908?

A. A year ago this last February, yes.

Q. How much of that time did you spend here in connection with the work ?

A. You mean personally?

Q. Yes, personally.

A. I cannot answer that with definiteness. I was here during some months a longer period than during other months. I have no idea without referring to my diary, so as to state it in specific terms.

The Special Master: State it approximately.

The Witness: I have always said that I have spent about half of my time here. I think that would be approximate. Latterly I have spent more of my time here. I have been here continuously for the last six weeks or so.

By Mr. Harrison:

Q. Did not Mr. Potter, who was in charge of the work for Virginia, propose to you that you unite and collaborate together?

A. I don't recall that. My recollection of that incident is that Mr. Potter suggested that we accept a certain amount as shown in one of the Acts. I think the Sinking Fund Act of 1853, as establishing the debt September 30, 1852, and as I knew 581 the books themselves did not substantiate the amount shown in the Act I refused to accept that. I also said to Mr. Potter that our method of examinations, that is the principle on which ours was conducted was so different from his that it would be impossible to collaborate on the other features.

Q. How did you know that; how did you know on what principle he was conducting his examination?

A. I had a very fair idea of the principle on which he was conducting it. I knew what books he was examining.

Q. He was examining the same books you were, I presume?

A. No; he did not examine all the books that we did.

Q. He must have examined some of them.

A. He did examine some of them.

Q. You were at work in the same capitol?

A. No, sir; he was working here and we were in the State Library Building.

Q. You were examining together the public records of Virginia, were you not?

A. We were examining them at the same time.

Q. And had a common object in view, did you not?

A. I don't know that the object was a common one.

Q. You do not? You say you had a general idea of the principle upon which he was working, and am I to understand that you derived that idea solely from the fact that you knew some of the books he was examining? 582

A. Not at all. Mr. Potter and I saw more or less of each other when we were down here, and in a general way there was no secret about what we were attempting to do; but the differences were such that it was impossible to collaborate and get along together—differences of principle.

Q. Did not Mr. Potter suggest as the reason for his proposal to you that it would insure a uniformity of plan in the statement of the accounts that you both were engaged in examining?

A. I do not recollect any such suggestion. Certainly I could not have acceded to it in any event.

Q. You could not have acceded to it?

A. No, sir.

Q. Then, if he had made a proposal, you must have declined it?

A. If the proposal was made I certainly should have declined it.

Q. Why would you have declined it?

A. Mr. Potter was acting under instruction of counsel for Virginia and I was acting under instruction of counsel for West Virginia.

The Special Master: In what respects did your methods differ?

The Witness: Our methods differed as to the detail in which we went into the accounts and the classification of the items.

By the Special Master:

Q. You say you differed in the details. That does not 583 illuminate me very much. In what particular did you differ as to how you went into the details?

A. Am I qualified to testify as to what Mr. Potter did? I can tell you what I did.

Q. If you do not know I will not bother you.

A. I was not familiar, of course, with all the details of Mr. Potter's work. I know we examined books that Mr. Potter did not examine, books of original entry, ledgers and journals.

Mr. Anderson: Can you specify what books?

Mr. Conrad: This is important.

The Witness: I can specify, but I will have to look it up.

The Special Master: Was the principal respect in which your methods differed the fact that Mr. Potter took the aggregates in many instances, and that you examined the details.

The Witness: Very largely that was the difference.

The Special Master: I rather inferred that. So that, in substance, was the difference in method between the two. Excuse me for interrupting.

Mr. Harrison: We are very much obliged to you for bringing that out.

The Witness: I should fancy—well, I don't want to guess.

By Mr. Harrison:

Q. You don't want to guess?

A. No.

Q. You did no guessing in your examination? 584

A. I tried not to.

Q. For the purpose of considering for a moment the degree of work expended by yourself in this compilation, I will refer you to page 4 of the defendant's exhibit D-1, 4, 5, and 6, which relates to the expenses of the Government of Virginia, classified there as Ordinary Expenses. You stated in your examination in chief that you did not make the examination which is the foundation of that summary?

A. That is true, sir.

Q. But that you did compare the totals and verify them.

A. Yes, sir.

Q. With what did you compare the totals?

A. I said I verified—I don't think I said I compared the totals. If I did say that it was an inadvertence. I verified them, and my verification is right there.

Q. What do you mean by verifying them?

A. I mean, to put it specifically, as to the amounts charged to the various accounts.

Q. Verified them as to the amounts charged to the various accounts?

A. Yes.

Q. Well, did you examine every item?

A. I certainly did not; I made no attempt to.

Q. You did not compare the totals, then, with the books from which the items were taken?

A. Certainly, absolutely. We used every method of verification—

Q. I ask you if you did it?

A. I personally? 585

Q. Yes.

A. I did not in all cases.

Q. We are talking about the case that I have called to your attention.

A. I did not so far as all the items are concerned. I have already testified, I think, that in regard to details my personal examination was confined to an examination about some questions which arose in the course of examination.

Q. Then you have no personal knowledge of the details that enter into and make up the summary of this statement, Exhibit D-1?

A. I should say that was rather a broad statement.

Q. You can answer it in as broad a way as you choose.

A. I think that I have a rather intimate knowledge of the details that enter into the account; but as to specifying the exact amount of each one of the items that went into the account, or to say that I extracted that myself from the books of original entry or that I examined it after it had been extracted from the books of original entry would be very wide of the mark, because in the tremendous volume of items examined that would be impossible for one man to accomplish.

Q. My whole object is simply to ascertain how much you know about foundation of these summaries.

A. I understand that. 586

Q. I am not questioning the fact that they have been correctly taken off.

A. I understand that. I am trying to give you fully my personal relation to the matter.

Q. If I understand correctly, you did not compare the totals that you speak of having verified with the books yourself?

A. Not in all cases, no, sir.

Q. The books of original entry I am referring to now.

A. Yes, sir.

Q. And you did not have any part personally in the investigation of the books of original entry that resulted in the summary shown in Exhibit D-1?

A. I would like to add something there, if I may. You speak of comparing totals with the books of original entry .

Q. Yes.

A. I hardly know what you mean by that, because the books of original entry do not contain totals. They contain items. The

books of original entry do not contain totals, but are made up of individual items.

Q. That is what I presumed.

A. And it would be impossible for me to compare totals with the books of original entry.

The Special Master: What he wants is just exactly what you mean when you say you verified these items. Now, he wants to know, first exactly what you did in the verification. That is what Mr. Harrison wants to get at, just exactly what processes you went through when you did what you say you did and verified these items. Now, what did you do with reference to that which resulted in verification? 587

The Witness: May I explain how the work was done?

The Special Master: Of course that is exactly what he wants, as I understand it.

Mr. Harrison: That is exactly what I want.

The Special Master: Explain exactly what you did when you say you verified these items. What did you do personally. That is what he wants to get.

The Witness: First, the total amounts were drawn off very similarly to the manner in which the Virginia totals were drawn off, I imagine, from the public records. Then we took the books of original entry, and an accountant and an assistant were assigned to abstract from the books of original entry all the items entered therein under a certain heading. For instance, Court charges, criminal charges, civil prosecutions, and various items of that kind. Each account was assigned to a team of accountants, or to an accountant and an assistant, and they went through the books of original entry and abstracted all the items in the period under examination from that account. Another set of accountants, another team, took some other accounts; and in that way all the items of receipts and disbursements were abstracted from the books of original entry and segregated. Then the total of those items, the individual items of each account, made the total account as appears on these schedules.

By the Special Master:

Q. Where did you come in; what did you do in the verification? 588

A. My work was supervisory, and in case any question arose or any question came up I examined that particular account personally, as I did in a number of cases, and passed on the matter where I could pass on it. When I could not pass on it it was submitted to counsel.

Q. Is that what you mean by verification?

A. No, sir; that is not what I mean by verification. Then the accounts were brought together in this final schedule, which we ex-

pect to introduce, showing the total of all these accounts, and the balances at the beginning and at the end of the period, and that account being in balance is an absolute verification of all the work that was done, and that I verified.

Q. Then I understand that you verified these various aggregates in connection with this general statement?

A. As a whole.

Q. For the purpose of ascertaining whether the thing balanced in the end?

A. Yes, sir.

By Mr. Harrison:

Q. The classification of the work and the detail work was done by the gentlemen who were employed under you?

A. Under the constant direction of Mr. Scoville, who was my chief of staff, and who was here all the time.

[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville. His qualifications and methods.*]

CLIFFORD E. SCOVILLE,

was produced as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

696

By Mr. McClintic:

Q. State your occupation?

A. I am a public accountant.

Q. State how long you have been engaged in the business of public accounting?

A. I have been engaged as a public accountant continuously for the last nine years.

Q. State where you are registered, if you are registered, if that is the proper term?

A. I have not taken the State examination in any State.

Q. State when you came to Virginia to engage in this 697 present work?

A. On the 14th of February of last year.

Q. How much time have you given it since the 14th of February, 1908.

A. Continuously.

Q. You have been here continuously from that time to this time?

A. Yes, sir.

Q. Giving your full time and attention to this particular work?

A. Entirely ,sir.

Q. What position did you occupy in relation to the work?

A. Chief of Mr. Dixey's Staff of accountants, engaged on this examination.

Q. There has been filed here a number of accounts as exhibits. Please state generally what you had to do with all those exhibits and the making thereof, if anything?

A. A considerable portion of the work I did personally, and all of the work in preparing the details, working up to the schedules, was prepared under my direct supervision. I was present while all the work was done, and closely in touch with it all the time.

[RECORD OF THE OPENING AND ADJOURNMENT OF THE SESSIONS BEFORE THE SPECIAL MASTER.]

[*Vol. 1. Nov. 16, 1908.*]

In the Supreme Court of the United States

No. 4 Original. October Term, 1907.

Commonwealth of Virginia, Complainant,

vs.

State of West Virginia, Defendant.

PROCEEDINGS BEFORE THE SPECIAL MASTER.

Richmond, Virginia.
November 16, 1908.

Counsel for the respective parties appeared before the Special Master, Charles E. Littlefield, Esq., at the rooms of the Corporation Commission of the State of Virginia, Richmond, Va., at 10 o'clock A. M.

Appearances:

W. A. Anderson, Esq., Attorney General of the Commonwealth of Virginia, Holmes Conrad, Esq., Randolph Harrison, Esq., John B. Moon, Esq., and Sanford Robinson, Esq., for the Commonwealth of Virginia. 106

William G. Conley, Esq., Attorney General for the State of West Virginia, John C. Spooner, Esq., William Mollohan, Esq., George W. McClintic, Esq., and Mr. Hogg, for the State of West Virginia.

1.

[*Vol. 1. Nov. 16, 1908.*]

The hearing was thereupon, at 4 o'clock P. M., adjourned until February 15, 1909, at 10 o'clock A. M.

[*Vol. 2. February 15, 1909. Second Session.*]

Richmond, Va.,
February 15, 1909,
10 o'clock, A. M.

The hearing was resumed, pursuant to adjournment, at the rooms of the Corporation Commission of the State of Virginia. 107

Present: Hon. Charles E. Littlefield, Special Master.

Hon. William A. Anderson, Hon. Holmes Conrad, Mr. Randolph Harrison, and Mr. John B. Moon, on behalf of the Commonwealth of Virginia.

Hon. William G. Conley, Hon. John G. Carlisle, Hon. John C. Spooner, Mr. Wesley Mollohan, and Mr. George W. McClintic, on behalf of the State of West Virginia.

[*Vol. 2. February 15, 1909.*]

(The hearing, at two o'clock P. M., was adjourned until May 4, 1909, at ten o'clock A. M.)

[*Vol. 3. May 4, 1909. Third Session.*]

Richmond, Va.,
May 4, 1909,
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 207

Present: Hon. Charles E. Littlefield, Special Master.

Appearances: Hon. William A. Anderson, Attorney General, and Messrs. Holmes Conrad, Randolph Harrison, and John B. Moon, for the Commonwealth of Virginia.

Hon. William G. Conley, Attorney General, Hon. John G. Carlisle, Hon. John C. Spooner, and Messrs. Wesley Mollohan, George W. McClintic and William M. O. Dawson, for the State of West Virginia.

[*Vol. 3. May 4, 1909.*]

(The hearing, at 10:30 o'clock A. M., was adjourned until Wednesday, May 5, 1909, at 10 o'clock, A. M.)

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[*Vol. 4. May 5, 1909. Third Session Continued.*]

Richmond, Va.,
May 5, 1909,
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 213

Present: Hon. Charles E. Littlefield, Special Master.

Appearances: Hon. William A. Anderson, Attorney General, and Messrs. Holmes Conrad, Randolph Harrison, and John B. Moon, for the Commonwealth of Virginia.

Hon. William G. Conley, Attorney General, Hon. John G. Carlisle, Hon. John C. Spooner, and Messrs. Wesley Mollohan, George W. McClintic, William M. O. Dawson, and Charles E. Hogg, for the State of West Virginia.

[*Vol. 4. May 5, 1909.*] 381

The hearing, at 4:55 o'clock P. M., was adjourned until Thursday May 6, 1909, at 10 o'clock A. M.

[*Vol. 5. May 6, 1909. Third Session Continued.*]

Richmond, Va.,
May 6, 1909,
10 o'clock A. M.

The hearing was resumed pursuant to adjournment of yesterday.

Present: Hon. Charles E. Littlefield, Special Master.
Appearances:
Messrs. William A. Anderson, Holmes Conrad, Randolph 382
Harrison and John B. Moon for the Commonwealth of Virginia.
Messrs. William G. Conley, John G. Carlisle, John C. Spooner, Wesley Mollohan, George W. McClintic, William M. O. Dawson and Charles E. Hogg, for the State of West Virginia.

[*Vol. 5. May 6, 1909.*]

The hearing, at 5 o'clock P. M., was adjourned until Friday, May 7, 1909, at 10 o'clock A. M.

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[*Vol. 6. May 7, 1909. Third Session Continued.*]

Richmond, Va., May 7, 1909.
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 537

Present: Hon. Charles F. Littlefield, Special Master.
Appearances:
Messrs. Anderson, Conrad, Harrison and Moon for the Commonwealth of Virginia.
Messrs. Conley, Spooner, McClintic, Mollohan and Hogg, for the State of West Virginia.

[*Vol. 6. May 7, 1909.*]

Thereupon, at 11:30 P. M., the further hearing of this cause was adjourned until June 22nd, at 10 o'clock A. M., at the same place.

[*Vol. 7. June 22, 1909. Fourth Session Adjourned. Fifth Session.*]

Richmond, Va., June 22, 1909.
10 o'clock A. M.

Owing to engagements of the Special Master and counsel, the meeting set for this time and place was adjourned until Thursday, July 1, 1909, at ten o'clock A. M., at the same place. 819

Richmond, Va., July 1, 1909.
10 o'clock A. M.

The hearing was resumed, pursuant to agreement.

Present: Hon. Charles E. Littlefield, Special Master.
Appearances:
Messrs. Anderson, Conrad, Harrison and Moon, for the Commonwealth of Virginia.
Messrs. Conley, McClintic, Carlisle, and Dawson, for the State of West Virginia.
Mr. Potter and Mr. Dixey, the accountants, and other former witnesses were also present.

[*Vol. 7. July 1, 1909.*] 942

(Thereupon, at 2:10 P. M., a recess was taken until to-morrow, Friday, July 2nd, 1909, at 9 o'clock A. M.)

[*Vol. 7. July 1, 1909.*] 1022

Richmond, Virginia, Friday, July 2, 1909.
9 o'clock A. M.

Met, pursuant to the taking of recess, at 9 o'clock A. M.

Present, the Special Master, and counsel for the respective parties.

[*Vol. 7. July 2, 1909.*]

We will now adjourn to meet in my office, 11 Pine Street, New York, on the 21st of September, for the argument of this case, at 10 o'clock in the forenoon.

Mr. Anderson: In the meantime we shall proceed with the printing?

The Special Master: Yes.

Thereupon, at 11:50 A. M., the adjournment was taken as above noted.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1823, to January 1, 1861

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Exhibit A

CARD RECEIPTS AND ITEMS SOLD BY

the

COMMONWEALTH OF VIRGINIA

From March 15, 1915, to January 1, 1917

Printed by
THOMAS ROSS DOZER
Official Printer, Appointed
by Charter Privilege
New York

COMMONWEALTH OF VIRGINIA.

Summary of Cash Receipts and Disbursements from March 19, 1823 to January 1, 1861.

Balances, March 19, 1823:		
Commonwealth Fund	$ 180,019.23	
Internal Improvement Fund	21,022.19	
Literary Fund	94,021.42	$ 295,062.84
Net profit on State bonds and certificates of indebtedness purchased, below par, from March 19, 1823 to January 1, 1861, Schedule No. 1		90,788.35
Value of shares of stock of James River Company, at $500.00 per share, purchased by the Commonwealth prior to March 19, 1823, deducted from principal of annuity to stockholders of the James River Company included in the Public Debt, per Joint Exhibit "A-1":		
	Shares	
Held by the Board of Public Works	284	
Held by the Literary Fund	138	
Total	422	
422 shares at $500.00 per share		211,000.00

RECEIPTS.

Amount of the public debt on the first day of January, 1861, per Joint Exhibit "A-1"	$32,919,863.93	
All moneys paid into the Treasury of the Commonwealth from the counties included within the present State of West Virginia during the period from March 19, 1823 to January 1, 1861; admitted to this account by counsel for West Virginia, per Joint Exhibit "F-1"	7,051,215.56	
Moneys received from counties within the territory now constituting the Commonwealth of Virginia, per Schedule No. 2	38,482,170.14	
Obligations of the Commonwealth of Virginia, other than the debt for public internal improvements, outstanding on the first day of January, 1861, per Schedule No. 3	2,204,898.19	
Other receipts, per Schedule No. 4	3,702,135.98	
Total receipts		84,360,283.80
Total		$84,957,134.99

DISBURSEMENTS.

Expenditures on account of appropriations made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, from March 19, 1823 to January 1, 1861; not including subscriptions to capital stock of internal improvement companies, nor such other expenditures as have been rejected from this account by counsel for West Virginia, per Joint Exhibit "C-1"	$ 1,251,288.92	
Expenses of the government of Virginia from March 19, 1823 to January 1, 1861, admitted as "ordinary expenses" by agreement between counsel for Virginia and for West Virginia, per Joint Exhibit "D-1"	18,207,684.29	
Expenditures on account of subscriptions to capital stock of joint stock companies, including banks, wholly or partly within the territory now constituting the State of West Virginia, in which the value of the equity of West Virginia, therein, is to be ascertained, except in banks, where the value of such equity is shown in the exhibit, per Defendant's Exhibit "G-1"	11,083,051.04	
Expenditures on account of banks and public internal improvements charged, by the Defendant, to the present Commonwealth of Virginia, per Schedule No. 5	27,586,527.60	
Expenditures on account of items not charged, by the Defendant, to the State of West Virginia, per Schedule No. 6	24,356,330.05	
Investments in bonds other than State bonds (for public improvements) and other investments not charged to the State of West Virginia, per Schedule No. 7	305,375.64	
Total disbursements		$82,790,257.54
Balances due from State agents on account of State bonds delivered for sale; and loss thereon and discount on bonds sold; at January 1, 1861, per Schedule No. 8		1,062,502.97
Balances, January 1, 1861:		
Commonwealth Fund	255,180.99	
Internal Improvement Fund	5,958.28	
Literary Fund	23,985.18	
Sinking Fund	819,250.03	1,104,374.48
Total		$84,957,134.99

1st Profit on State Bonds and Certificates of Indebtedness Purchased, Below Par, from March 19, 1823 to January 1, 1861.

On State bonds issued under act of February 16, 1825, account of James River Company, par value of $7,400.00, purchased for $6,290.00, through the Internal Improvement Fund		$ 1,110.00
On State bonds and bonds of the James River and Kanawha Company guaranteed by the State, purchased by the sinking Fund, established by act of March 10, 1835		872.39
On State bonds purchased and canceled by the Sinking Fund, established by act of March 26, 1853, less interest accrued at time of purchase, where not separated from principal on books		12,091.04
On State bonds purchased by the Sinking Fund, established under act of March 26, 1853, and held uncanceled, less interest accrued at time of purchase, not separated from principal on books		65,905.42
On State bonds purchased by the Literary Fund, and held uncanceled		13,422.00
Total		$93,400.85
Less:		
Premium on a bond of the James River and Kanawha Company guaranteed by the State, par value $500.00, purchased, through the Internal Improvement Fund, for $507.50	$ 7.50	
Premium on $50,000 of State bonds issued under act of Feb. 24, 1823, account of James River Co., purchased through the Internal Improvement Fund	1,250.00	
Difference between value at $500.00 per share, at which amount the shares are included in the principal of the annuity to the stockholders of the James River Company, assumed by the State in accordance with act passed March 23, 1860, of 87 shares, viz: $43,500.00, and cost of these shares, viz: $44,855.00, purchased by the Literary Fund	1,355.00	
		2,612.50
Net profit		$90,788.35

SCHEDULE NO. 1.

Moneys Received from Counties Within the Territory Now Constituting the Commonwealth of Virginia.

Bonus, received in cash, from banks within the present State of Virginia		$ 1,036,932.93
Bristoe estate (presumed to be an escheat):		
Sale of lots in Prince William County	$17,289.18	
Net income from the estate	7,914.05	25,203.23
Buckingham Furnace Lands	5,671.77	
Less charges applicable thereto	973.66	4,698.11
Clerks of County and Corporation Courts		571,053.84
Clerks of Superior Courts		308,238.45
Clerks of District Courts		2,890.90
Clerks of Superior Courts of Chancery		12,427.29
Costs, Civil and Criminal Prosecutions		6,273.00
Dividends on bank stocks		5,936,628.70
Dividends and interest received from turnpikes and roads lying wholly within the present State of Virginia		118,115.18
Dividends and Interest received from railroad companies, wholly within the Present State of Virginia		1,748,570.22
Dividends and interest received from canal and navigation companies, wholly within the present State of Virginia		321,467.78
Dividends received from turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia; Virginia's proportion on mileage basis		1,545.35
Escheats, less refunds ar l expenses		51,400.55
Fines, forfeitures and penalties, less refunds, etc...		307,004.63
James River and Kanawha Company		9,739.79
Virginia's proportion of dividend, amounting to $10,092.00 on stock of above company, on the basis of amount of capital invested within the territory now constituting the two present States.		
Lands, sale of unappropriated		46,873.48
Lands, redemption of		26,050.07
Lands, sales of delinquent and forfeited		18,804.75
Lands, redemption of and sales of delinquent and forfeited, less refunds and expenses		5,024.29
Militia fines, net		360,268.92
Northwestern Turnpike Road		38,788.51
Tolls collected at gates located within the present State of Virginia.		
Staunton and Parkersburg Road		8,740.63
Tolls collected at gates located within the present State of Virginia.		

Southwestern Turnpike Road, tolls		28,117.91
Taxes, general, net		26,407,649.32
Taxes, capitation, net		307,262.97
Taxes, free negroes, net		79,720.29
Tax on dividends, net		362,669.18
Tax on railroad travel		123,613.34
Tax on notarial seals		177,994.21
Taxes, collateral inheritance:		
Virginia	3,330.24	
County not recorded	348.85	3,679.09
Voluntary enslavement		4,695.79
Miscellaneous:		
Virginia	10,069.73	
Undivided (not claimed for West Virginia.)	9,867.60	19,937.33
Total		$38,482,170.14

SCHEDULE NO. 2.

Obligations of the Commonwealth of Virginia, Other Than the Debt for Public Internal Improvements, Outstanding on the First Day of January, 1861.

Temporary loans, in anticipation of taxes, as per the act of March 7, 1851	$ 2,000.00
United States; amount of surplus revenue received by Virginia, which was distributed by act of Congress, approved June 23, 1836, and accepted by the State in accordance with act passed December 20, 1836	2,198,427.99
Unclaimed dividends of incorporated companies	4,470.20
Total	$2,204,898.19

SCHEDULE NO. 3.

Other Receipts.

Bank of the United States:		
Dividends	$ 45,750.00	
Sale of 500 shares	50,351.00	
		$ 96,101.00
Chesapeake and Ohio Canal Company:		
Interest on debt to state for interest paid on guaranteed bonds		6,372.00
Dismal Swamp Canal Company:		
Repayment of loan made prior to March 19, 1823..		37,500.00
Dividends on capital stock of the James River Company owned by the Board of Public Works, being dividends on and after July 1, 1835, received from the James River and Kanawha Company.....		166,140.00
Interest:		
On shortage of Jerman Baker, State Treasurer, in Commonwealth Fund	$ 1,258.65	
On surplus revenue of the United States, deposited with Virginia, loaned to banks, etc.....	111,419.37	
On loan to Richmond and Petersburg Railroad Company	2,695.88	
On debt of the James River and Kanawha Company, due the State	142,181.74	
On guaranteed bonds of the James River and Kanawha Company, less amount of interest accrued at time of purchase of the bonds.....	2,713.83	
On United States five per cent. stock of 1821....	388.67	
On loans to the James River and Kanawha Company	603,965.37	
On loans to Kanawha Board, of James River and Kanawha Company in accordance with act of March 23, 1860	1,500.00	
		866,123.51
James River Company (on State account):		
Tolls and other income, net	$557,677.38	
Re-sale of James River Company bonds, purchased prior to March 19, 1823	30,300.00	
		587,977.38
Literary Fund, amounts received on account of principal of investments made prior to March 19, 1823:		
United States six per cent. stock redeemed....	$ 13,000.00	
Farmers Bank of Virginia stock sold for $9,762.00, less $2,575.00, paid for stock purchased after March 19, 1823	7,187.00	
United States Bank stock	78,350.00	
Loans to individuals	80,000.00	
Washington College loan	2,000.00	
Profit on United States stock redeemed $818.18, less premium of $420.00 on City of Richmond stock purchased after March 19, 1823	398.18	
		180,935.18
Net income from sundry investments of the Literary Fund not including interest on State bonds, so held, dividends on James River Company stock paid by the State nor dividends from banks in the present State of West Virginia		968,195.03

Northwestern Turnpike Road:		
Profit on Investment in United States stock...	$ 805.43	
Profit on investment in Bank of the Valley stock..	378.00	
		1,183.43
Preston, John, State Treasurer, on account of shortage prior to the year 1820		53,884.40
Premium on State bonds sold		354,176.75
Rentals, net		49,158.99
Staunton and Parkersburg Road:		
Interest on sundry accounts		451.16
United States, Revolutionary Claims:		
Through the Commonwealth Fund	$ 474,475.46	
Less payments on account of half pay claims and fees	410,703.50	
	$ 63,771.96	
Through the Literary Fund, less commissions	182,441.48	
		246,213.44
Upper Appomatox Company:		
Repayment of loan made prior to March 19, 1823 and interest thereon		11,791.74
Winchester and Potomac Railroad Company:		
Annuity	$ 65,075.00	
Interest on loans	10,856.97	
		75,931.97
Total		$3,702,135.98

SCHEDULE NO. 4.

Expenditures on Account of Banks and Public Internal Improvements, Charged, by the Defendant, to the Present Commonwealth of Virginia.

On account of subscriptions to capital stock of banks within the territory now constituting the Commonwealth of Virginia	$ 2,108,591.00
On account of subscriptions to capital stock of turnpike and road joint stock companies, wholly within the territory now constituting the Commonwealth of Virginia	1,897,747.22
On account of subscriptions to capital stock of bridge companies, wholly within the territory now constituting the Commonwealth of Virginia	49,622.16
On account of subscriptions to capital stock of Navigation companies, wholly within the territory now constituting the Commonwealth of Virginia	908,173.17
On acccount of subscriptions to capital stock of railroad companies, wholly within the territory now constituting the Commonwealth of Virginia	13,713,256.55
On account of appropriations to turnpikes and roads wholly within the territory now constituting the Commonwealth of Virginia	791,888.04
On account of the construction of the Blue Ridge	

railroad	1,604,824.73
On account of appropriation for bridge at Covington	6,007.07
On account of appropriations to turnpikes and roads extending into and between the territory now constituting the two present States; Virginia's proportion on an actual cost and mileage basis	247,289.33
Alexandria Canal Company stock subscription	272,000.00
Amount of loans to railroad companies, wholly within the territory now constituting the Commonwealth of Virginia, which were unpaid on January 1, 1861	2,930,000.00
On account of the construction of the Covington and Ohio Railroad, lying partly in the present Commonwealth of Virginia and partly in the present State of West Virginia, no part of the cost of which has been charged to West Virginia by the Defendant, under instruction of her counsel	2,787,128.33
Winchester and Potomac Railroad Company:	
Subscription to capital stock, ... $120,000.00	
Money loaned by the State..... 150,000.00	270,000.00
The above railroad lay, partly, within the territory now constituting the State of West Virginia. The stock and debt as above was surrendered, by Virginia, in the year 1846, for an annuity of $5,000.00. Under authority of an act passed by the Commonwealth of Virginia, February 22, 1866, the Winchester and Potomac Railroad Company was relieved from payment of the annuity by paying into the treasury of Virginia, bonds of the State amounting to $83.333.33, to cover the principal of the annuity, and a further sum to cover the amount of annuity in arrears. In view of the above no part of the original expen diture amounting to $270,000.00 is charged to West Virginia.	
Total	$27,586,527.60

SCHEDULE NO. 5.

Expenditures on Account of Items Not Charged by the Defendant to the State of West Virginia.

Brandonville, Kingwood & Evansville Road		$ 10,595.73
Bath, Town of, Loan to		2,500.00
Berryville & Charlestown Turnpike Co.		20,455.74
On account of subscription to the capital stock of the Berryville and Charlestown Turnpike Company, which turnpike extended into and between the territory now constituting the Commonwealth of Virginia and State of West Virginia. Omitted from Defendant's Exhibit "G-1" (the seventh inquiry of the decree of reference), because the road was purchased by the State, the stock interests, thereafter becoming valueless. A proportion of the purchase price paid for the physical property is included in Joint Exhibit "C-1."		
Birthplace of Washington, Land		139.21
Boundary Lines		16,704.78
Connollee, Thornton, Refund		186.70
Conventions, Expenses of		258,906.28
Chief Justice Marshall, Portrait of		500.00
Commission to South Carolina regarding Federal Relations		2,500.00
Contingent Fund (gun houses in Virginia)		1,000.00
Counterfeit Money, charged off		190.00
Cannon-house, 71st Regiment		110.00
Clarksburg & Buckhannon Turnpike Co.		19,259.36
Chesapeake & Ohio Canal Company stock subscription (in Maryland)		250,000.00
Calling out Militia at Wheeling in 1836		1,099.00
Damages remitted		93.96
Deaf, Dumb and Blind, Institute for:		
For site and buildings	$ 68,320.94	
Land, fencing, boiler-house, etc.	7,000.00	
Heating, lighting, etc., plant	25,341.00	
		100,661.94
Experimental Railway		10,000.00
Entertaining		3,602.02
Eastern Lunatic Asylum (Williamsburg):		
Buildings	$ 72,318.88	
Less receipts	4,054.69	
		68,264.19
Gas installation		6,000.00
Enclosure walls, etc.		13,161.00
Additional charges on buildings, etc.		38,589.00
Furniture, buildings, land, etc.		7,266.00
Exchange, expense of in paying interest on bonds		17,071.57
Expenses of the Board of Public Works	$ 203,379.38	
Less amount included in Joint Exhibit "D-1," as ordinary, amount excluded being extraordinary	164,917.76	
		38,461.62

Free persons of color—transportation to Liberia		26,103.50
Fugitive slave expense		2,201.00
Gun-house at Alexandria		900.00
Gun-house at Richmond, Fayette Artillery		1,079.09
Harper's Ferry raid	$ 255,745.77	
Less receipts	3,982.12	
		251,763.65
Insurrection of slaves in year 1831		18,969.41
International exchanges		2,836.19
Improvement of Public Square		1,456.91
Interest:		
On Public Debt	$18,324,044.50	
On Treasury Notes	133,527.34	
On Temporary Loans	107,844.57	
On old Military Debt of 1814 and prior	9,331.43	
		18,574,747.84
Interest on payment made to penitentiary before due		12,897.96
Interest on payments by the State for subscription to stock of Northwestern Bank of Virginia		8,091.23
Interest paid on bonds of the Chesapeake and Ohio Canal Company, guaranteed by the State		250,709.66
Interest on sundry current accounts, net		40,373.13
James River Company dividends, etc., accruing while property of that company was owned by State, paid afterward		3,619.09
James River Company:		
Dividends paid by the State to stockholders of, not including dividends on stock owned by the State	$ 81,415.28	
On account of annuity to stockholders assumed in accordance with act passed March 23, 1860	2,820.00	
		84,235.28
Jefferson, Statue		9,950.00
Kingwood & West Union Turnpike Co		18,140.61
Lafayette Reception		11,998.17
Lyle, amount received in 1780, refunded		125.33
Lemmon Slave Case—expense of prosecution		1,648.85
Lot on Governor street	$ 3,827.25	
Less, for lot on Franklin street, sold	2,843.33	
		983.92
Museum property		6,958.50
Maps (Commonwealth Fund)	$ 16,628.04	
Maps (through Internal Improvement Fund)	11,446.48	
		28,074.52
Medical College of Virginia (Richmond): Construction		25,000.00
Mexican War expense	$ 32,101.16	
Less receipts	27,943.66	
		4,157.50

Monroe Monument and Burial	$ 4,280.54	
Less receipts	393.00	
		3,887.54
Margaret Academy (Accomac county, Va.):		
For support	$ 500.00	
For improvement and repairs	1,000.00	
		1,500.00
Northwestern Turnpike Road, repairs, etc. (West Virginia's proportion)		109,587.74
Northwestern Turnpike Company of Alleghany, a Maryland corporation, formed for the purpose of constructing that part of the Northwestern Turnpike Road which ran through formerly Alleghany county, now Garrett county, Maryland, on account of subscription to the capital stock		7,882.92
Pensioners, Cincinnati Society		696.87
Pensioners		65,997.02
Penitentiary, erecting Hospital		9,346.98
Penitentiary, lot for		3,000.00
Penitentiary, pipe for water supply		1,600.50
Pauley, L. A. (Augusta county), claims dating from 1782		434.15
Powder, arms and armory, year 1860		79,471.59
Primary Schools, out of income		2,400,331.11
Slaves executed, condemned and transported	$ 575,450.03	
Less receipts from sales	247,761.46	
	$ 327,688.57	
Less net amount received through the Literary Fund for sales of runaway slaves and free negroes	16,520.22	
		311,168.35
Swords and medals voted by Assembly		11,681.35
Surveying: Paid to James River and Kanawha Company for surveying Potts and Second Creeks		852.37
Surveying		250,206.56
State bonds loaned to the James River and Kanawha Company, Kanawha Board, for improvements in accordance with act passed March 23, 1860, omitted from charges against West Virginia by the Defendant under instructions of her counsel		60,000.00

Staunton & Parkersburg Road, repairs, etc. (West Virginia's proportion)		21,700.74
State Courthouse		22,387.54
Square, Capitol, Governor's Mansion, etc.: Guard-house, grading, etc., installing water and gas, and purchase of lot		12,278.47
Treasury Notes, overpayment of		50.00
Treasury Notes, expense of printing, etc.		375.74
Tucker, J. Randolph, Attorney General, amount paid to, in the year 1859, on account of prosecution, etc., of Selden, Withers & Company		500.00
Trans-Alleghany Lunatic Asylum		27,000.00
University of Virginia, buildings and water system		25,000.00
Virginia Military Institute, buildings		151,000.00
Virginia Military Institute, Statue of Washington		10,000.00
Washington College, unexplained payment in 1848		8,114.64
Warehouses purchased in present State of Virginia		37,550.15
Washington Monument (at Richmond)	$ 262,249.22	
Less receipts	92,542.41	
		169,706.81
Wheeling, City of, for interest on guaranteed bonds	$ 30,627.45	
Less receipts	14,940.00	
		15,687.45
War, arms and munitions of		3,346.12
Wars, expenses of old		20,132.35
Weighmaster of Live Stock, land at Richmond		1,500.00
Western Lunatic Asylum (Staunton):		
Buildings	$ 164,642.37	
Less receipts	4,000.00	
		160,642.37
Water, gas and heating plant		40,685.00
Land, enclosure walls, etc.		25,988.01
Support, land, etc.		10,700.00
Total		$24,356,330.05

SCHEDULE NO. 6.

Investment in Bonds Other Than State Bonds (for Public Improvements), and Other Investments Not Charged to the State of West Virginia.

Through the Internal Improvement Fund:			
Bonds of the James River Company, issued under act passed February 17, 1820		$31,300.00	
State bonds issued for bonds of the James River Company, under act of March 18, 1840	$40,000.00		
under act of March 16, 1847	25,300.00	65,300.00	
			$ 96,600.00
Through the Literary Fund:			
Virginia Revolutionary 6% bonds		$ 3,074.77	
Bank of Virginia, stock		18,449.12	
University of Virginia, loan No. 5		40,000.00	
University of Virginia, loans No. 6 and No. 7		20,000.00	

Bonds of the James River Company, issued under act passed February 17, 1820, par value of $15,000.00 purchased for	15,960.00	
Richmond Academy stock	400.00	
Bank of the Valley, stock	10,134.00	
Loan to Emory and Henry College	18,000.00	
The Faculty of the Medical Department of the Hampden Sidney College, at Richmond: Amount invested in land and buildings	25,000.00	
Medical College in the valley of Virginia; invested in property (at Winchester)	6,400.00	
Davis's book on Criminal Law, copyright purchased	12,000.00	
		169,417.89
Through the Commonwealth Fund: Virginia Revolutionary 6% bonds		39,357.75
Total		$305,375.64

SCHEDULE NO. 7.

Balances Due from State Agents on Account of State Bonds Delivered for Sale; and Loss Thereon and Discount on Bonds Sold, At January 1, 1861.

From Selden, Withers Company:		
Account of coupon bonds	$548,173.98	
Account of sterling coupon bonds	265,447.83	
Total	$813,621.81	
Less amount received through the Sinking Fund, applied on above	22,800.00	
		$ 790,821.81
From James F. Soutter:		
Account of coupon bonds	$100,000.00	
Account of sterling coupon bonds	86,650.00	
Total	$186,650.00	
Less amount received through the Sinking Fund, in full settlement	17,333.59	
Loss		169,316.41
Discount on sterling coupon bonds sold by Selden, Withers and Company		102,364.75
Total		$1,062,502.97

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FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 3

ORIGINAL.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

APPENDIX TO THE RECORD.

APPENDIX

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IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

APPENDIX TO THE RECORD.

BEING CERTAIN PUBLIC ACTS OF
THE LEGISLATURE OF VIRGINIA AND WEST VIRGINIA
AND OF THE CONGRESS OF THE UNITED STATES
AND
EXTRACTS FROM
THE CONSTITUTIONS AND CODES OF THE TWO STATES
PERTAINING TO THIS CAUSE.

Acts Relating to the Fund for Internal Improvement and the Board of Public Works.

CHAP. XVII.

An Act to create a fund for Internal Improvement.

[Passed February 5th, 1816.] 35

1. *Be it enacted by the General Assembly,* That a fund shall be, and the same is hereby created, to be denominated "The Fund for Internal Improvement," and to be applied, exclusively, to the purpose of rendering navigable, and uniting by canals, the principal rivers, and of more intimately connecting, by public highways, the different parts of this Commonwealth.

2. *And be it further enacted,* That this fund shall consist of the shares held by the Commonwealth, in the stock of the little River Turnpike Company, of the Dismal Swamp, Appomattox, Potowmac, and James River Canal Companies, of the Bank of Virginia and Farmers' Bank of Virginia, together with such dividends as may, from time to time, accrue to such shares of stock, and such bonus, or premiums, as may be hereafter received, for the incorporation of new Banks, or for the augmentation of the capitals, or the extension of the charters of the existing Banks.

3. *And be it further enacted,* That, for the purpose of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may, from time to time, direct to be applied to any object of internal improvement, it shall be and the same is hereby vested in a corporate body, to be styled, "The President and Directors of the Board of Public Works," in which name they shall have a common seal, and perpetual succession, subject to the limitation hereinafter provided, shall be capable of suing and being sued, pleading and being impleaded, and shall have and enjoy all the rights and privileges of a corporation.

4. *And be it further enacted,* That the Governor of the Commonwealth shall be, ex officio, President of the Board of Public Works; that the Directors, a majority of whom shall constitute a Board for the transaction of any business devolving on the corporation, shall consist of the Treasurer and the Attorney General of the Commonwealth, for the time being, and of ten citizens thereof; of whom three shall reside westward of the Allegany mountain; two between

the Allegany and the Blue Ridge; three between the Blue Ridge and the great post road, which, passing through the territory of the Commonwealth, crosses the principal rivers thereof at, or about the head of tide water; and the residue, between that road and the sea coast.

5. *And be it further enacted*, That the Directors of the Board of Public Works, except the Treasurer and Attorney General, shall be chosen annually, by joint ballot of the two houses of the General Assembly, and receive such compensation for their services, as may be allowed by law, which, until otherwise provided, shall be the same mileage for travelling to and from the place of sitting, and the same pay per diem during the continuance of their session, as is now by law allowed to a member of the General Assembly.

6. *And be it further enacted*, That in the absence of the Governor, the board may elect a president pro tempore, from their own body, who shall preside over the deliberations of the board, until the Governor is enabled to attend.

7. *And be it further enacted*, That the President and Directors of the Board of Public Works shall have power to appoint a principal Engineer, or Surveyor of the Public Works, and a Secretary to the board; together with such other officers and assistants, as they shall deem necessary; each of whom shall receive for his services such compensation, as the President and Directors of the Board of Public Works may allow, to be paid out of the revenue of the fund for internal improvement, and to be reimbursed that fund, by an allowance to the Commonwealth of so much of the stock of any canal, or turnpike company, as shall constitute a reasonable compensation for the services rendered such company by the surveyor and his assistants.

8. *And be is further enacted*, That the President and Directors of the Board of Public Works shall hold an annual meeting in the city of Richmond, or at such other place as may be designated by law, to begin on the first Monday in November of every year, and to continue until the business of the board is transacted—But, that the President of the board may, at his own pleasure, or shall, at the request of any three Directors thereof, convene an extra meeting of the board, for the transaction of any extraordinary business which may devolve on the corporation.

9. *And be it further enacted*, That the President and Directors of the Board of Public Works may, at their annual meetings, enact, alter, or amend, such rules as to them may seem proper, for the purpose of regulating the order of their proceedings; that they may have power to adjourn the board for any period not exceeding six months, or, when occasion shall require it, to have an extra meeting at any other place than that designated by law, and shall have power to make and establish such bye-laws, rules and regulations, for the better ordering of the conduct of their officers, agents and ser-

vants, as to them may seem expedient, provided the same be not inconsistent with the constitution and laws of this Commonwealth, or of the United States of America. They shall also have power, at any time during the recess of the Legislature to fill any vacancy which may occur in their own body, either from death, resignation, removal, inability, or any other cause.

10. *And be it further enacted*, That the fund for internal improvement, subject to the order of the President and Directors of the board, shall be deposited in the Treasury of the Commonwealth, and kept distinct and apart from all other public money: It shall be paid out or delivered by the Treasurer of the Commonwealth to the order of the board, certified and subscribed by the Secretary, and countersigned by the President; that the Treasurer shall keep a fair and regular account of all such disbursements, and carefully preserve the certificates upon which the same shall have been made, and shall render an account thereof to the General Assembly, at the same time at which he renders his annual account of the disbursements of the ordinary revenue: that once in every year the Board of Public Works shall depute a committee of their body to examine the accounts of all disbursements made by order of the board, during the year next preceding the annual meeting of the board, and to compare these accounts with the Treasurer's books, and the certificates giving authority for the payment of the several sums of money, or stock, entered therein; that their reports shall certify to the board, that the same have been fully accounted for, or otherwise, as the case may be.

11. *And be it further enacted*, That the President and Directors of the Board of Public Works, shall be, and they are hereby authorized to subscribe in behalf of the Commonwealth, to such Public Works, as the General Assembly may, from time to time, agree to patronize, such portions of the revenue of the fund for internal improvement, as may be directed by law but that no part of the said fund shall be subscribed towards the stock of any canal, turnpike, or other Company, until three fifths at least of the whole stock, necessary to complete such canal, turnpike, or other public work of such company, shall have been otherwise subscribed; nor until, of the stock so subscribed, one fifth thereof shall have been actually paid in by the respective subscribers, or the payment thereof effectually secured by bond with approved security, or a deed of trust upon the real estate of such subscriber, of twice the value of such fifth part; such bond to be taken payable to the President, Directors and Company authorized to complete such public work, and to be recoverable against the obligor or his securities, on motion, after ten days' notice, in any court of record within the Commonwealth having jurisdiction thereof; and such deed of trust to be proceeded upon whenever the trustee therein named shall be required to do so by such President, Directors and Company.

12. *And be it further enacted,* That the dividends on the stock which may be subscribed by the President and Directors of the Board of Public Works shall go exclusively to other subscribers than the Commonwealth, until such portion of the stock of those subscribers, as shall have been actually paid in, shall have 38 netted to them six per cent. per annum, from the specified time of such payment; that any increase of profit, after that nett income shall have been assured to the subscribers, shall belong exclusively to the fund for Internal Improvement, until the nett annual income of the whole stock, actually expended by any company, shall reach six per cent per annum; after which, the Commonwealth and the other subscribers to the stock of the company shall divide the nett profits on such stock in proportion to their respective interests. That, whenever the nett income of any company, to which any part of the fund hereby created shall have been subscribed, shall be found, for two succeeding years, or upon an average of five succeeding years, to surpass fifteen per cent. per annum, the General Assembly may reduce the tolls, from which such income is derived, so as to limit the nett revenue of the company to that amount; *provided,* that should the tolls for any two succeeding years fail to yield a nett income to the company of ten per cent. per annum, the President and Directors of the Board of Public Works, on satisfactory evidence being adduced thereof, may authorise the tolls to be augmented, so as to assure to the company such nett income; *And provided, also,* that after the lapse of sixty days from the period at which such tolls shall have first netted ten per cent. per annum, the maximum profit of the company may be reduced to twelve per cent.; and after the lapse of one hundred years from the same period to ten per cent per annum.

13. *And be it further enacted,* That the President and Directors of the Board of Public Works shall vest in some productive fund the unappropriated dividends accruing upon any of the stock committed to their charge, until the same shall be specially applied by law to some object of internal improvement: and shall have power, subject to the control of the General Assembly, to sell, from time to time, as may be ordained by law, the whole or any part of the shares held by the Commonwealth, in the stock of any canal, turnpike or other company subscribed for under the provisions of this Act, for the purpose of investing the proceeds of sale in the stock of some other similar company, subject to the like conditions as have been before expressed in this Act.

14. *Be it further enacted,* That the President and Directors of the Board of Public Works shall have power to appoint, in behalf of the Commonwealth, so many directors of every Public Work, as shall bear to the whole number of the directors of such work the proportion of the Commonwealth's shares of stock in such work, which may be subscribed in pursuance of this Act, to the whole number of

shares subscribed thereto: *provided, however,* that whenever it shall be found expedient by the Legislature to authorise the subscription of any part of the fund hereby created to any company already incorporated, the provisions of this section shall not be construed as applying to such company, unless it be otherwise directed by the Act authorising the subscription.

15. *Be it further enacted,* That it shall be the duty of the President and Directors of the Board of Public Works, to keep a fair and accurate record of all their proceedings, which shall be at all times open to the inspection of the members of the General Assembly, and of the President, Directors and other officers of any company interested therein; that they shall report to the General Assembly, at or near the commencement of every annual session thereof, the exact state of the fund for internal improvement; the progress and condition, noting especially the nett income, of all the public works within the Commonwealth; the surveys, plans and estimated expense of such new works as they may recommend to the patronage of the General Assembly, together with such other important information, as they may have it in their power to collect, in relation to the objects committed to their trust.

16. *And be it further enacted,* That the public faith shall be and the same is hereby solemnly pledged to fulfill the appropriation made by this Act; and that the said appropriation shall continue in force until the first day of January, of the year one thousand eight hundred and sixty six, except at such times as the United States of America may be involved in war, or the safety of this Commonwealth may, in the opinion of the General Assembly require: when the General Assembly may withdraw (during the period of actual hostilities, or of such imminent danger,) the whole or any part of the said fund for the purpose of defence; provided such withdrawal can be made without a violation of any engagement entered into under this Act.

17. This Act shall commence and be in force from and after the passage thereof.

CHAPTER VIII.

An Act to amend an Act, entitled "An Act to create a fund for Internal Improvement."

[Passed February 21st, 1818.]

1. *BE it enacted by the General Assembly,* That the orders of the Board of Public Works, drawn and authenticated in the manner prescribed by the Act, entitled "An Act to create a fund for

Internal Improvement," which passed the fifth day of February, one thousand eight hundred and sixteen, instead of being payable at the Treasury, as is provided by the tenth section of the said Act, shall henceforth be presented to the Auditor of Public Accounts, who is hereby authorised and required to issue his warrant on the Treasury, for the amount specified in such orders.

2. *And be it further enacted*, That so much of the section aforesaid, as requires that the Treasurer shall preserve the certificates upon which disbursements of the fund for Internal Improvement have been or may be made, shall be and the same is hereby repealed; and all such certificates and vouchers shall be delivered, as soon as may be convenient after the passage of this law, to the Auditor of Public Accounts, together with a correct statement of all disbursements heretofore made, to be preserved by him in his office.

3. This Act shall commence and be in force from and after the passing thereof.

CHAPTER IV.—An act to amend an act, entitled, "an act creating a fund for internal improvement."—[Passed March 4th, 1819.]

8

1. *Be it enacted by the General Assembly*, That hereafter the annual meeting of the Board of Public Works shall take place on the first Monday after the meeting of the General Assembly in every year, instead of the time now prescribed by law.

2. *And be it further enacted*, That it shall be the duty of every such company, to the stock of which the Board of Public Works shall subscribe, as aforesaid, annually, on or before the seventh day of December in every year, to furnish to the Secretary of the Board of Public Works a report of the income and expenditure of every such company for the next preceding year, including payments made by the stockholders as well as tolls, together with a statement of the condition and progress of their works, and shall pay into the public treasury to the credit of the fund for internal improvement, within sixty days after any dividend may be declared, any such dividend, to which the Board of Public Works may be entitled; and in case of failure, either in furnishing such report, or paying such dividends as aforesaid, such company so failing shall forfeit and pay to the Board of Public Works a penalty not exceeding five hundred dollars, which said dividends and penalty may be recovered by motion in the general court, on ten days previous notice.

3. *Be it enacted*, That hereafter, it shall not be lawful for the President and Directors of the Board of Public Works, to subscribe for any part of the stock of any company, unless otherwise specially authorized by law, until they shall have received satisfactory evidence, not only that one-fifth part of the subscriptions of indivi-

duals has been secured according to law, but that the whole of such private subscriptions have either been secured as aforesaid, or are made by solvent persons, fully able to pay.

4. *Be it further enacted*, That when the said board, having made any subscription for the stock of any such company, shall have good reason to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscriptions, until proper legal measures can be taken to secure the faithful payment of private subscriptions, and the faithful application of the funds of the company.

5. *And be it further enacted*, That the pay and allowance for travelling and attendance, to the members of the Board of Public Works hereafter, and to those who have attended during the present session of the Legislature, shall be the same as that allowed by law to the members of the General Assembly—But, no member of the General Assembly who may be a member of the Board of Public Works shall have any allowance for his attendance, or mileage, as a member of the board, when coming to, or during the sitting of the Legislature.

6. *And be it further enacted*, That all acts and parts of acts coming within the purview of this act, be, and the same are hereby repealed.

7. This act shall commence and be in force from and after the passing thereof.

CHAPTER 45.—An act making more effectual provision to carry into effect, the act, entitled "an act to amend the act entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

[Passed February 24th, 1823.]

* * * * *

1. *And be it further enacted*, That there be appointed annually, by joint ballot of both houses of the General Assembly, an officer to be denominated the second auditor, whose duty it shall be to keep distinct accounts of the receipts and disbursements of the Literary Fund, of the fund for internal improvement, and of the fund constituted to effect the purposes of the act, the title of which is recited in the preamble to this act. He shall draw all warrants authorising the treasurer to receive monies on account of any of the funds before mentioned, after the amount shall have been adjusted by the other auditor, when by law, he is authorised to adjust the same, and audit all claims properly chargeable on them, and issue warrants to the

persons entitled thereto. He shall act, ex-officio, as accountant of the Literary Fund, as clerk of the president and directors 51
thereof, and as secretary of the Board of Public Works: and the powers and duties of the persons holding those offices, respectively, shall thenceforth cease. And the said second auditor is hereby authorised to appoint a clerk, should the board of directors hereby established deem one necessary, to aid him in the discharge of his duties. All books and papers in any manner connected with the constitution, administration or regulation of the funds herein before mentioned, shall be deposited with the said second auditor, who shall carefully preserve them.

3. All monies belonging to any of the funds herein before mentioned, shall be kept in the public treasury, separate from other public monies; and regular and distinct accounts shall be kept of the receipts and disbursements, and a report thereof annually made by the treasurer to the General Assembly, on or before the fifth day of its session.

CHAPTER 21.—An Act to amend the Act entitled an Act to create a fund for Internal Improvement.

(Passed February 20th, 1828.) 15

1. *Be it enacted by the General Assembly,* That so much of the twelfth section of the act, entitled "an act to create a fund for Internal Improvement," as provides that the dividends on the stock which may be subscribed by the president and directors of the Board of Public Works, shall go exclusively to other subscribers than the Commonwealth, until such portion of the stock of those subscribers, as shall have been actually paid in, shall have netted to them, six per cent. per annum from the specified time of such payment, shall be, and the same is hereby repealed; and all dividends upon subscriptions hereafter authorised, or required to be made by the General Assembly, to any canal, road, bridge company, or other corporation, shall be made, and stand upon the same footing with subscriptions made by individuals.

2. This act shall be in force from the passing thereof.

CHAP. 14.—An ACT prescribing the ex-officio duties of the officers of government, and for other purposes.

(Passed March 5th, 1833.) 16

1. *Be it enacted by the general assembly of the commonwealth of Virginia,* That hereafter the governor, treasurer, auditor and second

auditor, *ex-officio*, shall constitute the board of public works, the James river company, the literary fund, and North-western turnpike road company; with full power to transact all the business of these various boards; to assemble when and where they choose and may deem expedient; and a majority being present, to proceed to the discharge of all or any business.

2. *Be it further enacted*, That whensoever either of these boards may think it necessary for the public good to assemble or meet at any other place than at the seat of government, or at any time to send one or more members of their body to examine the condition of any of the public works, or to transact any business connected with the discharge of the duties required in these various boards, all reasonable expenses incurred thereby shall be paid out of the fund, the business of which it may be intended to transact; the accounts to be allowed by the respective boards, and certified and paid in the usual manner.

3. *Be it further enacted*, That each of the boards shall adjourn its sessions from time to time; but any intermediate meeting may take place at the pleasure of a majority of said board, notice thereof being given to all the members of the time and place of meeting, to each individually, if may be, and if not, by publication in some newspaper.

4. Should the governor from any cause fail to attend at any session of any of these boards, the treasurer shall in his absence, act as president thereof.

5. All acts and parts of acts coming within the purview of this act shall be and the same are hereby repealed.

6. This act shall commence and be in force from the passing thereof.

No. 5.—Resolution providing that the register of the land office shall be ex-officio a member of the Board of Public Works.

[Adopted February 28, 1846.] 162

Resolved by the senate and house of delegates, That hereafter the register of the land office shall be *ex officio* a member of the Board of public works.

ACTS RELATIVE TO STATE EXPENDITURES IN INTERNAL IMPROVEMENTS OWNED PARTLY BY THE STATE, AND THE ORGANIZATION OF COMPANIES FOR THE CONSTRUCTION THEREOF.

Secs. 11 and 12 of the Act of Feb. 5, 1816.
(See Internal Imp. Fund & B. P. W.)

CHAP. XXXVIII.

An Act prescribing certain general regulations for the incorporation of turnpike companies.

[Passed February 7th, 1817.] 41

1. *Be it enacted by the General Assembly,* That, whenever it may be deemed expedient by the General Assembly, to grant a charter for the incorporation of a company to make a turnpike road, and an act shall actually pass the General Assembly for such purpose, the following general provisions shall be deemed and taken to be part of the said charter or act of incorporation, to the same effect as if the same were expressly re-enacted in reference to any such charter or act, except so far as such special grant, charter or act may otherwise expressly provide; viz: the commissioners named in any special act of incorporation, or a majority of them, shall have power to open books for subscriptions to the stock of the company, at such places as shall be named in the said special act, and to divide the capital stock authorized to be subscribed by the said act, into as many shares, not exceeding one hundred dollars each, in amount as they may deem proper, and to appoint any number of deputy commissioners to open books for a subscription to the stock of such company; and the subscriptions may be made by the subscribers to the said stock, either in person or by power of attorney in Virginia currency, or such medium as the commissioners or a majority of them may agree to receive. It shall be the duty of such commissioners, and deputy commissioners, to receive all monies which may be due upon the shares subscribed in their books, at any time before the first election of the president and directors of the company, as herein provided for; but all monies which may

be payable on such shares, after such election, shall be paid to the said president and directors, or to their order. The said commissioners and deputy commissioners shall, forthwith, after such election, pay over to the president and directors all monies received by them; and in failure thereof, the said president and directors may recover the amount due from them, or from any one or more of them, by motion, on ten days previous notice, in the superior or inferior court of any county or corporation wherein such commissioner or commissioners may reside; the clerk shall endorse, upon the execution, which shall issue upon such recovery, that no security shall be taken, and the sheriff or other officer shall govern himself accordingly.

2. The subscription books shall remain open until at least one half of the capital stock of the company shall have been subscribed; public notice of which event shall be given by any three of the said commissioners, who shall have power, at the same time, to call a general meeting of the subscribers, at such convenient place and time, as they shall name in the said notice: to constitute any such meeting, a number of persons entitled to a majority of all the votes which could be given upon all the shares subscribed, shall be present, either in person or by proxy; and if a sufficient number 42
to constitute a meeting do not attend on that day, those who do attend shall have power to adjourn from time to time, until a meeting shall be formed.

3. If it shall appear to this meeting on examination of the books, that one half of the said capital sum shall have been subscribed, then the said subscribers, their executors, administrators and assigns, from the time of said meeting, shall be and they are hereby declared incorporated into a company, with all the rights, privileges and immunities of a corporation or body politic in law, and may make such bye-laws and regulations, not inconsistent with the constitution and laws of this state, or of the United States, as shall be necessary for well ordering and conducting the affairs of the company.

* * * * *

16. In consideration of the expenses the proprietors will incur in opening, improving and repairing the said road, the said road, with all the tolls and profits, shall be and the same is hereby vested in the respective proprietors forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever.

17. *Be it further enacted*, That, so soon as any section of five miles of the said road shall be completed, it shall be lawful for the president and directors to apply to the court of that county in which such section, or the greater part thereof, may lie, for the appointment of three discreet and disinterested freeholders to examine the same, who, or any two of whom, being sworn for that purpose, shall examine such section, and make a written report of the condition thereof

to the court; and if, after such report and such other evidence as shall be offered, the said court shall be satisfied, that such section is completed in the manner prescribed by this act, they shall make an order of record declaring that it is so completed, and it 48
shall thereupon be lawful for the president and directors, and they are hereby authorized to erect thereon a toll gate or gates, and they shall be entitled to demand and receive the following tolls upon the said section, to wit: for every score of sheep or hogs, six and one quarter cents; for every score of cattle, twelve and one-half cents, and so in proportion for any greater or lesser number; for every horse, mare, mule or gelding, three cents; for every two wheeled riding carriage, ten cents; for every four wheeled riding carriage, twenty cents; for every cart or waggon the wheels whereof do not exceed four inches in width, six and a quarter cents, for every four footed animal drawing the same; and for every cart or waggon the wheels of which exceed four inches in width, and roll less than seven inches, three cents for every four footed animal drawing the same; and for every cart or waggon the wheels of which are seven inches or more in width, one cent, for every four footed animal drawing the same: *Provided always,* that return waggons or carts shall pay one-half of the said tolls only: and the like rules and proceedings shall be had for every other section of five miles of the said road, when the same shall be completed, and the like tolls shall be paid for passing the same; and if, after all the full sections of said road shall be completed, there shall remain any fractional part of a section, a toll gate may be erected thereon after it shall be completed, in the same manner as is provided in relation to the full sections; and tolls may be demanded thereat, bearing the same proportion to the tolls allowed on a full section as the said fractional part bears to such full section.

* * * * *

24. *Be it further enacted,* That if the said president and directors shall fail to keep the said road in repair for the space of 51
eighteen months, then shall the interest of the said company in the road and tolls aforesaid be forfeited and cease forever.

* * * * *

28. *Be it further enacted,* If the said president and directors 52
not begin the said work within two years, after the passage of the act for incorporating the company, or shall not complete the same within ten years thereafter, in the manner hereinbefore directed, then the interest of the said company, in the road and tolls aforesaid, shall be forfeited and cease.

29. At the end of one year from the completion of the road, the president and directors shall report, to the baord of public works, a statement, shewing the whole amount of the capital stock expended in the construction of the road, the amount of tolls received during each preceding year, the expenses and charges incurred during each year, and the nett annual profit or loss, on the capital expended. If, from this statement and such other evidence as shall be offered,

the president and directors of the board of public works shall be satisfied, that the nett average profits of the three succeeding years, on the capital stock expended, will not equal ten per centum per annum, then the said president and directors of the board of public works shall so augment the tolls hereby allowed so as to make them sufficient, in their estimation, to yield such nett annual profit for the three succeeding years; and if the said board of public works shall be satisfied, from the evidence aforesaid, that the average nett profits of the said three succeeding years will exceed fifteen per centum per annum, on the capital stock expended, then they shall so diminish the tolls hereby allowed as to make them only sufficient, in their estimation, to yield an annual nett profit of fifteen per centum per annum, for the said period of three years. The president and directors of the turnpike company shall in like manner, at the expiration of every period of three years, after the said one year from the completion of the road, return to the board of public works a 53 similar statement shewing the amount of expenditures, receipts and nett profits of each year, of such period; and upon each return so made, it shall be the duty of the president and directors of the board of public works to regulate the tolls by increasing them when below the minimum, and diminishing them when above the maximum, upon the principle above laid down, so as to attain as nearly as practicable the following result, that is to say: that for each period of three years during the first twenty-one years, the average nett profits upon the capital stock expended shall not exceed fifteen per centum per annum, nor be less than ten per centum per annum; that, for each period of three years, for the next thirty years, the average nett profits upon the capital stock expended shall not exceed twelve per centum per annum, nor be less than eight per centum per annum; and that, for each period of three years thereafter, the average nett profits upon the capital stock expended shall not exceed ten per centum per annum, nor be less than six per centum per annum.

The president and directors of the board of public works may from time to time prescribe the form, in which the returns aforesaid shall be made, and the evidence by which they shall be verified; and if the president and directors of the turnpike company shall fail to make the return accordingly, and to produce the evidence required for its verification, without good cause for such failure to be shewn to the board of public works, it shall be the duty of the president and directors of the board of public works to make an entry upon their journal declaring such failure, and forthwith to reduce the tolls of said turnpike company, to an amount not exceeding one half the tolls hereby allowed, and calculated to yield a nett profit not exceeding in their estimation five per centum per annum. Such reduction shall be continued until the proper return shall have been made, verified by the proper evidence, or until good cause shall have been shown for the failure.

30. And the president and directors of the said company are hereby required, when they make their first report to the board of public works as herein required, to accompany the same, with a complete plat or map of their road.

* * * * *

32. The president and directors shall cause to be written or printed certificates for the shares of the stock in the said company, and shall deliver one such certificate, signed by the president, and counter-signed by the treasurer, to each person for every share subscribed by him, which certificate shall be transferable by him, subject however to all payments due or to become due thereupon; and such assignee, having first caused the transfer or assignment to be entered in a book of the company to be kept for that purpose, shall thenceforth become a member of the said company, and shall be liable to pay all sums due, or which shall become due upon the stock assigned to him: *Provided, however,* That such assignment shall in no wise exempt the assignor, or his representatives, from their liability to the said company, for the payment of all such sums, if the assignor or his representatives shall be unable, or shall fail to pay the same; *And provided, moreover,* That if the commonwealth shall desire to purchase the stock of such company, and shall vest authority to make such purchase in any person, body politic or corporate, it shall not be lawful for any proprietor of such stock to sell or transfer the same to any other person whatever, until he shall actually and with good faith have offered the same for sale, for the price which he is willing to take therefor, to the person, body politic or corporate so authorized to purchase by the Commonwealth; and after such person, body politic or corporate shall have been so authorized to purchase on behalf of the commonwealth, no transfer or assignment to any other person shall be registered, or entered in the books of the company, nor shall any such transfer or assignment vest any right whatever, unless it shall be proved to the satisfaction of said president and directors, that the stock so assigned, or transferred, had been, with good faith, previously offered to the person, body politic or corporate, so authorized, at a price at least as low as that at which it had been sold to such assignee, or transferree.

* * * * *

35. *Be it further enacted,* That the powers hereby given to the president and directors of the board of public works, may be at any time transferred by the legislature to any other corporate or natural body, and all returns hereby directed to be made to the said board of public works may be hereafter in like manner directed to be made to any other body.

36. This act shall commence and be in force from the passing thereof.

CHAP. LXXXI.—An act prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth.

[Passed February 11th, 1832.] 71

1. *Be it enacted by the general assembly,* That all subscriptions which are now authorized by law, and have not been made by the board of public works, or which may hereafter be so authorized shall be subject to the following conditions previous to subscription, to wit: In every case the board of public works shall be furnished with a certificate, under the seal of the company, signed by their treasurer, and countersigned by their president, stating that at least one-fourth of the private subscriptions of not less than three-fifths of the capital stock, has been actually paid up into the hands of the said treasurer, and that the remainder of said subscription is either so paid, or is made by solvent persons fully able to pay; and these facts shall be shewn to the satisfaction of the board of public works. They shall also be furnished with a list of the stockholders, shewing the number of shares standing in each name. If any private improvement shall have been commenced previously to the subscription thereto being authorized or made, the board of public works shall be furnished with a statement, shewing the amount of money received up to the date of such statement, and on what account received, and of the amount expended in the work, together with the balance of money on hand the contracts entered into for the construction of the improvement, the exact progress made therein, as near as may be, its dimensions, its mode of construction, and a correct map of its location.

2. The instalments on the future subscriptions of the board of public works, shall be payable in the manner, and on the conditions herein-after mentioned, when not otherwise specially provided by law; that is to say, one-fourth of such subscriptions shall be paid on the production of the draft of the treasurer, or other authorized agent of the company, for the same, in such form as the board of public works may prescribe and the remaining three-fourths on similar drafts, in six equal semi-annual instalments, or in instalments of the same proportions with future payments of private subscriptions, at the discretion of the board of public works: *Provided,* That before payment of the instalments aforesaid, the said board of public works shall be furnished in every case with a certificate in the form and manner required by the first section of this act, shewing the amount actually paid up by the private stockholders, which amount must be at least equal in proportion to the amount payable by the board of public works. But should the fund for internal improvement be inadequate, in the opinion of the said board, to the pay-

ment of the full amount of the instalments aforesaid, after providing for the subscriptions previously made, then their subscriptions shall be payable in such proportions, and at such periods, as the said board may deem expedient.

3. Whenever it shall happen in any year that the funds of the board, applicable to the purpose, shall prove insufficient to discharge when due the full amount of the instalments of subscriptions actually made, then and in that case, it shall be the duty of the said board to expend the funds so applicable, as far as they will go, in the payment of the instalments of such subscriptions as shall stand first in point of order, according to the date of resolutions of the board of public works making the said subscriptions: and 72
the fund for internal improvement shall not be chargeable with any interest, in consequence of such suspension in the payment of the whole, or any part of said instalments.

4. When the board of public works, having made any subscriptions to the stock of any company, shall have good cause to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied, or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscriptions until proper legal measures can be taken to secure the faithful payment of private subscriptions, and the faithful application of the funds of the company.

5. The board of public works shall have the right to appoint such a number of the directors in all companies hereafter incorporated, to whose stock the board of public works may subscribe, as will be in proportion to the stock so subscribed; and the fund for internal improvement shall participate in all dividends declared by said companies, in the proportion which the amount actually paid on behalf of the state, bears to the amount of private subscriptions actually paid up at the time of declaring such dividends: and in all general meetings of the stockholders of such company, the proxy or proxies representing the interest of the fund for internal improvement, shall have the right to vote on all questions, and in the election of all officers except directors, in the manner, and under the limitations contained in the twentieth section of the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," passed the seventh day of February, eighteen hundred and seventeen.

6. It shall be the duty of the president and directors of every such company, to the stock of which the board of public works shall subscribe as aforesaid, annually, on or before the seventh day of December, to furnish to the secretary of the board of public works a report of the income and expenditure of every such company, for the next preceding year, including payments made by the stockholders, as well as tolls, together with a statement of the progress and condition

of their works a list of the stockholders at the time of making said report, with the number of shares standing in each name, and such other information respecting the affairs of said company, as the board of public works may require. It shall also be the duty of the president and directors of such company, within sixty days after any dividend shall have been declared by them, to give information thereof to the second auditor, and to pay into the public treasury, to the credit of the fund for internal improvement, within the said period, any such dividend to which the board of public works may be entitled: and in case of failure, either on the part of the president and directors of such company, in furnishing such report and information, or of the treasurer of such company, in paying such dividends as aforesaid, the president and directors, or the treasurer, as the case may be, of each company so failing, shall individually forfeit and pay to the board of public works, a penalty not exceeding fifty dollars; which said dividends and penalty may be recovered by motion in the general court, on ten days previous notice. 73

7. All acts and parts of acts coming within the purview of this act, shall be, and the same are hereby repealed.

8. This act shall be in force from and after the passing thereof.

CHAP. 94.—An ACT to explain the act authorizing subscriptions on part of the commonwealth to the capital of joint stock companies.

(Passed March 18, 1836.) 69

Whereas the limited income of the fund for internal improvement will not justify subscriptions on the part of the state to all the canal, rail-road, turnpike, navigation, or other joint stock companies, which have been, or may be incorporated, for carrying on works of internal improvement, and it is expedient, until such income shall be adequately increased, that it shall be applied to the aid of such works, as by their character or position are best calculated to promote the prosperity of the state at large: Therefore,

1. *Be it enacted by the general assembly*, That nothing contained, or to be contained, in any acts incorporating companies for the purpose of executing and carrying on works of internal improvement, shall be considered as a pledge or assurance on the part of the general assembly, to subscribe on behalf of the state for any portion of the stock of such companies, unless the legislature expressly direct such subscription to be made in the act of incorporation, or by subsequent enactment.

2. This act shall be in force from its passage.

See Act April 9th, 1838, Chap. 12, under head "Interest on Public Debt."

ACTS RELATIVE TO THE REPAIR OF ROADS AND BRIDGES; ACTS AUTHORIZING THE TRANSFER OF ROADS AND BRIDGES TO THE COUNTIES IN WHICH THEY LIE; AND ACTS EFFECTING SUCH TRANSFERS.

[Code of Virginia, 1860.] 351

CHAPTER LXI.

Of works of Internal Improvement.

* * * * * * * * * * * * *

Transfer of state's interest in roads to county courts. 365

52. It shall be the duty of the board of public works with the con- 1853-4
sent of the county court of *such counties*,† all the justices having been summoned for that purpose, a majority of the justices being present when such consent is given, when in their opinion the public interest will be promoted thereby, to transfer and convey the state's interest in any turnpike or plank road, or any part thereof, to the county or counties in which said road may lie. The transfer shall be made by formal resolution, to be entered on the records of the board of public works, and a copy to be transmitted by the secretary of the board to the clerk of the county court, for record in the clerk's office in each county or counties where such road may lie.

Transfer of interest of private stockholders.

53. The private stockholders in any turnpike or plank road in which the state's interest has been transferred in accordance with the preceding section, with the like consent of such county court, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the stockholders other than the state 366
to the county or counties as aforesaid, by a process similar to that by which the state's interest is conveyed.

† The title of the act from which sections 52, 53 and 54 are taken, authorizes "the transfer of certain turnpikes and plank roads to the counties in which they lie." The words "such counties," therefore, refer to the counties mentioned in the title.

Power of courts over roads when transferred.

54. The said county courts respectively, to which the interest of the state, or the entire joint stock interest in said roads shall be so conveyed, are hereby invested with all the rights, duties and powers in respect of said roads, now held and exercised by said board of public works, and may in their discretion change the mode and manner of keeping up said roads: provided the board of public works shall not transfer any turnpike or plank road that can in their opinion be made productive or self-sustaining: and provided this act shall not take effect until the stockholders other than the state shall have transferred their interest to said county.

CHAP. 230.—An ACT to transfer the Moorefield and Alleghany turnpike to the county court of Hardy county.

Passed January 20, 1858. 147

Whereas it is represented to the general assembly of the state of Virginia, that the travel upon the road known as the Moorefield and Alleghany turnpike in the county of Hardy, is insufficient to furnish the amount of toll necessary to keep the road in proper repair: therefore,

1. Be it enacted by the general assembly, that the main line of the Moorefield and Alleghany turnpike is hereby transferred to and vested in the county court of Hardy, to be held and kept in repair for public use, and to be in all respects subject to the authority of said county court, as other public roads in said county: provided, however, that the assent of the stockholders other than the commonwealth in said turnpike shall have been first obtained to the transfer: and provided further, that this act shall not apply to the Petersburg stem of said road.

2. This act shall be in force from the date of its passage.

CHAP. 129.—An ACT releasing the state's interest in the Wheeling and Marshall county turnpike road.

Passed February 25, 1858. 97

1. Be it enacted by the general assembly, of the state in the Wheeling and Marshall county turnpike road company in the counties of

Ohio and Marshall, is hereby released to the said counties of Ohio and Marshall: provided, however, that this act shall not take effect until the stockholders in the above named company shall relinquish their stock in the said road to the counties of Ohio and Marshall; and the said counties are authorized and required to keep said roads in order as other county roads.

2. This act shall be in force from its passage.

CHAP. 128.—An ACT releasing the commonwealth's interest in the Williamsport turnpike company to the county of Wood.

Passed April 7, 1858. 97

1. Be it enacted by the general assembly, that the interest of the commonwealth in the Williamsport turnpike company, and the road and toll houses and the grounds on which they are situate, in the county of Wood, be and the same is hereby released to the said county of Wood; to be subject to the control and disposal of the court of said county: provided, however, that before this act shall take effect, the individual stockholders in said company shall release to said county their interest.

2. This act shall be in force from its passage.

[Wheeling Acts Dec. 2, 1861.]

CHAP. 35.—An ACT transferring the State Stock in "The Marshall and Ohio Turnpike Company," to Marshall and Ohio counties.

Passed January 24, 1862. 20

Whereas, It is represented to the General Assembly, That the president and directors of "The Marshall and Ohio Turnpike Company" have failed to open and keep their road in repair, as required by the acts of assembly authorizing the construction of the same: Therefore,

1. Be it enacted by the General Assembly of Virginia, That all the stock now owned by this commonwealth in "The Marshall and Ohio Turnpike Company," be and the same is hereby transferred to, and vested in the counties of Marshall and Ohio, in the following proportions, that is to say nine-tenths of said stock to the county of Marshall, and one-tenth to the county of Ohio, to be under the control of the county courts of said counties, respectively.

2. Be it further enacted, That it shall be lawful for the said county

courts of Marshall and Ohio counties severally, to transfer the proportions, or either of them, or any part or parts of the said stock, vested by this act in the said counties of Marshall and Ohio, to any company that shall hereafter be lawfully organized, empowered and bound to open and keep in good repair said road. But until such transfer is made, the county court of Marshall county shall have entire control over all that portion of said road lying in the county of Marshall, and the county court of Ohio county shall 21
have control over all that portion of said road lying in the county of Ohio; and it shall be the duties of said courts to have their respective portions of said road worked and repaired, either by tolls to be collected therefrom, or by the mode prescribed, or that may hereafter be prescribed by law for the opening and keeping in repair of other county roads in said counties of Marshall and Ohio, respectively, or otherwise, in such manner and upon such terms as they may severally determine.

3. This act shall be in force from its passage.

[W. Va.]

CHAP. 30.—An ACT to authorize the Heirs of David Albright to establish a Ferry across Cheat River.

Passed August 3, 1863. 31

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful for the heirs of David Albright, deceased, their heirs and assigns, to establish and keep a ferry from their lands at or near the town of Albright, in Preston county, across Cheat river to some convenient point on the opposite shore, where a former ferry, known as "Snider's ferry," crossed said river, and immediately below the site of the recent wire suspension bridge, known as the "Cheat River Toll Bridge," until the first meeting of the board of supervisors of the said county. And said board of supervisors shall at their first meeting, or as soon thereafter as may be practicable, (if any other person or persons shall have title to said ferry landings, or either of them,) award such damages as they may deem just to such adverse claimants, for the use and occupancy of said real estate for the period said Albright's heirs may have used the same for said ferry.

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[W. Va.]

CHAP. 120.—An ACT providing for the construction and repair of Roads and Bridges.

Passed December 4, 1863. 178

Be it enacted by the Legislature of West Virginia:

1. The board of public works shall have power, by obtaining the consent of the board of supervisors, to transfer any road, bridge or turnpike to the county in which such road, turnpike or bridge may be. Such transfer shall be made by formal resolution to be entered on the record of the board of public works, and a copy of the same transmitted by the secretary of the board, to the clerk of the board of supervisors, for record in each county or counties where such road, turnpike or bridge may be; provided, the board of public works shall not transfer any road, turnpike or bridge which can in their opinion be made self-sustaining.

2. The private stockholders in any turnpike, road or bridge 179
in which the state's interest has been transferred in accordance with the preceding section, with the consent of the board of supervisors of such county, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the said stockholders to the county or counties as aforesaid, by a process similar to that by which the state's interest is conveyed.

3. The board of supervisors of each county shall provide for establishing, keeping in repair, changing the location of, or vacating any road, and keeping a record of all the county and township roads in their respective counties, subject to the provisions of this act.

* * * * *

44. The fifty-second chapter, and the fifty-second and fifty- 185
third sections of the sixty-first chapter of the Code of Virginia, second edition, and all other acts inconsistent with this act, are hereby repealed.

[W. Va.]

CHAP. 71.—An ACT to relinquish to the Elk River Bridge Company the Stock in said Company belonging to the State.

Passed February 28, 1865. 61

Be it enacted by the Legislature of West Virginia:

The interest or stock of this State in the Elk River Bridge Com-

pany is hereby relinquished to the said bridge company for the benefit of the stockholders thereof other than the state; provided, that this act shall be of no effect until the said bridge company shall cause to be erected across the said river a bridge suitable for passengers and wagons: Provided, however, that if the state, by her legislature, shall at any time within one year from the passage of this act, or at any time before the said bridge company shall have completed a bridge upon the piers and abutments owned by them, appropriate on the part of the state an amount toward the erection of the said bridge, proportionate to her interest in the same, then the interest so relinquished shall revert to and become the property of the 62
state as though this act had not been passed: Provided, further, that the state does not by this act relinquish her interest in any claim that she may have in common with the other stockholders in the bridge company against the government of the United States for the bridge destroyed by the army on the thirteenth day of September, eighteen hundred and sixty-two.

[W. Va.] 133

[No. 8.] Joint Resolution requesting the members of Congress from this State to secure the aid of the United States in repairing roads and bridges injured during the war.

Whereas, during the recent rebellion, our state, lying on the border, has been peculiarly exposed to the raids of the enemy and the ravages and desolations resulting from the oft repeated tread of advancing and retreating armies; and whereas, during this painful process, our citizens have endured suffering beyond weight or measure, in the loss of life in every form, at the hand of every variety of enemy—in captivity—in exile—in perils night and day; and in many parts of our state the general disruption of all organized legal and social order, and the embarrassment of even the ordinary pursuits indispensable to their comfort and existence. In this broad sweep of contending armies, and foes of lesser note, many of their churches, court houses—not to mention private property—have been injured or destroyed; but the roads and bridges, the most important of which, were in part owned by the state, and were used and many of them destroyed, by the Union armies—and the bridges burnt by order of the Union commanders as means of safety, leaving our principal roads impassable. Therefore,

Resolved by the Legislature of West Virginia, That our sena-
tors in congress be hereby instructed, and our representatives 134
requested, to respectfully, yet earnestly, present our grievances

to the attention of congress, and to adopt such measures as may best secure adequate relief in the premises; and that the governor transmit a copy hereof to each of our senators and representatives in congress.

ADOPTED, January 24, 1866.

[W. Va.]

CHAP. 117.—An ACT to provide for the repair of the Roads and Bridges throughout the State.

Passed February 28, 1866. 115

Be it enacted by the Legislature of West Virginia:

The interest of this state in all the turnpike roads and bridges within this state, is hereby transferred to the several counties in which the same or a part thereof may lie, and the boards of supervisors of the several counties in which such road or part thereof, or bridge, may lie, are hereby vested with all the rights, powers and duties heretofore vested in the state, as a stockholder in such road or bridge, among which shall be the power to establish gates and collect lawful tolls, and do and transact all other lawful business. The suspension bridges across the Monongahela river at Fairmont and Morgantown, and any other such bridge in this state, and the Kanawha turnpike, are not intended to be included in this act.

Provided, that this act shall not apply to the Maryland and Virginia Bridge Company.

ACTS RELATING TO THE WINCHESTER AND POTOMAC RAILROAD COMPANY.

CHAP. CXXII.—AN ACT to incorporate the Winchester and Potowmac railroad company.

(Passed April 8, 1831.) 187

1. *Be it enacted by the general assembly*, That it shall be lawful to open books in the town of Winchester, and at such other place or places, as a majority of the commissioners herein after named shall think fit, under the direction of John R. Cooke, Alfred H. Powell, Alexander S. Tidball, John Gilkison, Henry W. Baker, Joseph H. Sherrard, Henry M. Brent, John M. Brome and John Heiskill, or any five of them, for the purpose of receiving subscriptions to the amount of three hundred thousand dollars, in twelve thousand shares of twenty-five dollars each to constitute a joint capital stock, for the purpose of making a rail-road from the town of Winchester, to some convenient point on the Potowmac river, at or near Harper's ferry. The time and place of receiving subscriptions aforesaid, shall be advertised in such newspapers as the commissioners may direct and the books for receiving the same, shall not be closed in less than sixty days, and if it shall appear that more than twelve thousand shares of the capital stock aforesaid, shall have been subscribed for within the said sixty days, it shall be the duty of the said commissioners, or any five of them, to reduce the number of shares subscribed for among the subscribers, in fair and equal proportions to the amount of stock subscribed for respectively by each, until the whole amount of shares shall be reduced to twelve thousand; but if the whole number of shares shall not be subscribed for within sixty days from the time the books shall be opened to receive subscriptions, then the books may be closed or continued open, as a majority of the above named commissioners may judge to be most beneficial, until the whole number of shares shall be subscribed for.

2. When four thousand shares shall be subscribed in manner aforesaid, the subscribers, their executors, administrators and assigns, shall be, and they are hereby declared to be incorporated into a company by the name and style of "The Winchester and Potowmac Rail-Road Company," and in that name may sue and be sued, plead and be impleaded, and shall possess and enjoy all the rights, privileges and immunities of a corporation or body politic, in law, and may make all

such by-laws, rules and regulations, not inconsistent with the constitution and laws of this state, or of the United States, as shall be necessary for well ordering and conducting the affairs of the company. 195

* * * * *

33. This act shall be in force from its passage.

CHAP. CII.—An act to authorize a subscription on behalf of the commonwealth to the stock of the Winchester and Potowmac rail-road company.

(Passed March 14th, 1832.) 161

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby authorized, to subscribe on behalf of the commonwealth for so much of the capital stock of the Winchester and Potowmac rail-road company, not exceeding one-fourth or seventy-five thousand dollars, as shall not be taken and subscribed for by individuals before the first day of April next; the said subscription to be made according to the provisions of the act, entitled, "an act prescribing certain general conditions on which future subscriptions to the capital of joint stock com- 162 panies," shall be made on behalf of the commonwealth, passed at the present session of the general assembly.

2. *Be it further enacted*, That the subscriptions hereby authorized, shall be made upon condition, that if any company heretofore incorporated, or which may be hereafter incorporated, for the purpose of constructing a rail-road within, or chiefly within, the valley between the Alleghany and Blue Ridge of mountains, and shall choose so to do, the said Winchester and Potowmac rail-road company shall permit such other company to connect and unite their rail-road with that between the said town and the Potowmac river, so as to enable the cars of each company to proceed along the rail-road of the other. And each of the said companies shall be, and they are hereby required, to permit the cars or other vehicles of the other company to proceed on and along their said road, to the termination, or to any intermediate point thereof, upon payment of the tolls allowed by law for the use of the said rail-road: *Provided*, That nothing in this act contained shall be so construed as to abridge or impair the right of the Shenandoah company to construct a canal or other works authorized by their charter, along the margin of the Shenandoah river.

3. This act shall be in force from the passing thereof.

CHAP. 107.—An ACT to authorize a further subscription on behalf of the state to the stock of the Winchester and Potomac rail-road company.

[Passed January 31st, 1833.] 72

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby authorized to increase the subscription on behalf of the commonwealth, heretofore authorized by law, to the stock of the Winchester and Potomac rail-road company, to two-fifths of the whole capital of the said company. And any subscription made by virtue of this act, shall be upon the same terms and conditions on which the subscription was authorized by the act, entitled, "an act to authorize a subscription on behalf of the commonwealth, to the stock of the Winchester and Potomac rail-road company," passed March the fourteenth, eighteen hundred and thirty-two.

2. This act shall be in force from its passage.

CHAP. 158.—An ACT authorizing a loan on the part of the state to the Winchester and Potomac rail-road company.

(Passed February 13, 1838.) 112

1. *Be it enacted by the general assembly,* That the board of public works be and they are hereby authorized and directed to loan on behalf of the commonwealth, out of the unappropriated income of the fund for internal improvement, to the Winchester and Potomac rail-road company, the sum of one hundred and fifty thousand dollars, upon condition that the salaries of the officers and servants of the said company shall not be directly or indirectly increased during the existence of this debt, and that the said Winchester and Potomac rail-road company, previous to the payment of any portion of the said loan, do execute to the president and directors of the said board of public works, a mortgage upon their whole property, real and personal, and upon the nett income of all their tolls and receipts, and cause the same to be recorded in the county court of Frederick county, to secure the payment of the interest on said loans semi-annually, and the repayment of the principal thereof in ten equal semi-annual instalments, beginning with the sixth payment of the semi-annual interest, into the treasury to the credit of the fund for internal improvement.

2. *Be it further enacted,* That if the income of the fund for internal improvement shall be inadequate to pay the said loan, the

said board of public works are hereby empowered to borrow such sum or sums as may be necessary therefor, agreeably to such terms and conditions as may be provided for loans for purposes of internal improvement, in any general act passed at the present session of the general assembly. But should no such act be passed, then the said board are hereby authorized to effect the said loan or loans upon the terms and conditions prescribed by the act passed February the sixth, eighteen hundred and thirty-four, entitled, "an act to amend the act, entitled, 'an act to authorize a subscription on behalf of the commonwealth to the stock of the Winchester and Potomac rail-road company, and for other purposes."

3. *Be it further enacted*, That if the said company accept the benefit of this act, it shall be upon condition that the legislature have the right to tax the stock, property and profits of said company, and that said company shall be subject to the thirty-sixth section of "an act prescribing certain general regulations for the incorporation of rail-road companies," passed March eleventh, eighteen hundred and thirty-seven.

4. *And be it further enacted*. That the loan granted by this act shall be first applied to the payment of so much of the debt due from said company, as is secured by lien upon the property of said company, and the remainder to any other portion of the debt of said company, and to no other purpose; and the board of public works are hereby required and authorized to make such arrangements as may be considered by that board necessary and proper to insure the faithful performance of the requirements of this act.

5. This act shall be in force from its passage.

CHAP. 116.—AN ACT to amend an act, entitled "an act to incorporate the Winchester and Potomac railroad company," passed April 8th, 1831.

[Passed February 24, 1846.] 89

1. *Be it enacted by the general assembly*, That the Board of public works shall be and it is hereby authorized to receive from the Winchester and Potomac railroad company, annually, from and after the first day of August eighteen hundred and forty-seven, the sum of five thousand dollars, in lieu of interest upon the debt due by said company to the commonwealth, and of dividends upon the stock of the commonwealth in said company.

2. *Be it further enacted*, That so long as said company shall, according to the provisions of this act, pay on the first day of August of each and every year as aforesaid, into the public treasury, the sum

of five thousand dollars, the same shall be received in lieu of interest and dividends as aforesaid, and the payment of the principal of said debt shall be so long postponed.

3. *Be it further enacted,* That if default shall be made in the payment of said annuity, the Board of public works shall have power to proceed to collect the whole of said debt and interest due, in the same manner as if this act had not been passed.

4. *Be it further enacted,* That the lien of the commonwealth upon said road now existing, be retained in full force, for the whole debt and interest, the object of this act being only to postpone the collection of the same as long as the conditions of this act are complied with.

5. *Be it further enacted,* That this act shall not affect the right of the said company to dispose of their road to the Baltimore and Ohio railroad company, under the act of the last session.

6. This act shall be in force from its passage.

[Va.]

CHAP. 332.—An ACT for the relief of the Winchester and Potomac Railroad Company.

Passed February 22, 1866. 439

Whereas the Winchester and Potomac railroad company have, by reason of the late war, sustained the loss of all its buildings, rolling stock, and other property, and a portion of the roadway itself, besides the use of the road from the commencement of the war: Therefore,

1. Be it enacted by the general assembly, That it shall be lawful for said company to pay into the treasury of the commonwealth, on or before the first day of January, eighteen hundred and sixty-eight, the sum of eighty-three thousand three hundred and thirty-three and one-third dollars (the principal sum owing), together with all interest due thereon. Such payment to be made in any bonds of the state, at their par value: and upon such payment being made, the claim of the state against said company shall be lifted and discharged.

2. This act shall be in force from its passage.

[Va.]

CHAP. 242.—An ACT to authorize the Winchester and Potomac Railroad Company to increase its Capital Stock and to Borrow Money.

Passed February 25, 1867. 674

1. Be it enacted, That the Winchester and Potomac railroad company is authorized to increase its capital stock by an amount not ex-

ceeding seventy-five thousand dollars, in shares of twenty-five dollars each, in order to have the debts due from the said company converted into stock, or such of the debts as the creditors may agree to convert; and that such new stockholders shall be subject to the same terms and conditions, and be entitled to the same rights and privileges, as the present holders of stock.

2. That the said company is hereby authorized to borrow a sum of money not exceeding fifty thousand dollars, on such time and for such rate of interest as may be agreed upon, and to secure the payment thereof by a lien upon the road and its real and personal property and franchise.

3. This act shall be in force from the passage thereof.

[Va.]

CHAP. 98.—An ACT to amend and re-enact an act entitled an act for the relief of the Winchester and Potomac Railroad Company, passed February 22d, 1866.

Passed April 25, 1867. 900

1. Be it enacted by the general assembly, That the act passed February twenty-second, eighteen hundred and sixty-six, entitled an act for the relief of the Winchester and Potomac railroad company, be amended and re-enacted to read as follows:

"Whereas, the Winchester and Potomac railroad company have, by reason of the late war, sustained the loss of all its buildings, rolling stock and other property, and a portion of the roadway itself, besides the use of the road from the commencement of the war: Therefore,

"§ 1. Be it enacted by the general assembly, That it shall be lawful for said company to pay into the treasury of the commonwealth, on or before the first day of January, eighteen hundred and sixty-eight, the sum of eighty-three thousand three hundred and thirty-three and one-third dollars (the principal sum owing), together with all interest due thereon, such payment to be made in any bonds of the state, at their par value; and upon such payment being made, the claim of the state against said company shall be lifted and discharged.

"§ 2. In case the said company find it necessary to borrow money for the purpose aforesaid, upon the terms of securing such loan by a subrogation of the lender to the lien of the state for the amount advanced, then the treasurer of this commonwealth is hereby authorized and required, upon the request of the president of 901
said company, to assign and transfer the lien now held by the commonwealth to such lender, for so much as he may advance and interest, and release the residue of the debt, but without any recourse to the state."

2. This act shall be in force from its passage.

ACTS RELATING TO THE COVINGTON & OHIO RAILROAD.

CHAP. 67.—An ACT to authorize the Board of public works to construct a railroad from Covington to the Ohio river on state account.

Passed February 15, 1853. 66

1. Be it enacted by the general assembly, that for the purpose hereinafter named, the Board of public works be and they are hereby incorporated and made a body politic, under the name of "The Covington and Ohio Railroad Company," with all the powers conferred by the Code of Virginia upon the Board of public works when they are required to cause works of internal improvement to be constructed on state account, and with such additional powers and privileges, and subject to such restrictions as are set forth in said Code in respect to companies incorporated to construct railroads.

2. That said company shall cause to be constructed and equipped a railroad with a heavy rail from some point at or near Covington or Clifton Forge in the county of Alleghany, by the best practicable route, to some point on the Ohio river not below the mouth of Big Sandy river nor above the town of Point Pleasant.

3. That in the construction of this railroad the Board of public works shall commence and continue the construction of said road from its western terminus east at the same time they are extending the said road from its eastern terminus west.

4. That the Board of public works are hereby authorized to borrow on the credit of the commonwealth, in the mode prescribed by existing laws, the money necessary to construct and equip said road, but not more than one million of dollars are hereby appropriated for the purposes of this act.

5. That in constructing said road said company shall not interfere with the route or track for its canal which the James river and Kanawha company may within six months after the passage of this act designate by location, but said Covington and Ohio company may, before the expiration of said six months, proceed to locate and construct said road, with the consent of the stockholders of the James river and Kanawha company first had and obtained: provided, 67
that six months notice shall be given to the James river and Kanawha company before proceeding to locate each successive section of fifty miles.

6. This act shall be in force from its passage.

CHAP. 99.—An ACT providing for the completion of the Covington and Ohio railroad.

Passed March 13, 1856. 83

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed for making loans by existing laws or that may hereafter be prescribed, the sum of five hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio railroad; to be expended within the present and succeeding year; and the sum hereby appropriated to be expended in the tunneling, grading, masonry and bridging of said road.

2. This act shall be in force from its passage.

CHAP. 105.—An ACT providing for the further construction of the Covington and Ohio rail road.

Passed March 20, 1858. 87

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed for making loans by existing laws, or that may hereafter be prescribed, the sum of eight hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio rail road; to be expended within the years eighteen hundred and fifty-eight and eighteen hundred and fifty-nine.

2. Be it further enacted, that the third section of an act passed February fifteen, eighteen hundred and fifty-three, entitled an act to authorize the Board of public works to construct a rail road from Covington to the Ohio river on state account, be and the same is hereby repealed.

3. This act shall be in force from its passage.

699

CHAP. 14.—An ACT to provide for the construction and equipment of the Covington and Ohio rail road.

Passed February 29, 1860. 107

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed by law for making loans, or that may hereafter be prescribed, the sum of two and one-half millions

of dollars, to be appropriated to the construction and equipment of the Covington and Ohio rail road: provided, that not more than one million thereof shall be expended in any one year.

2. This act shall be in force from its passage.

[Va.]

CHAP. 200.—An ACT to incorporate the Covington and Ohio Railroad Company.

Passed February 26, 1866. 317

1. Be it enacted by the general assembly of Virginia, That the persons upon whom the benefits of this charter may be hereafter conferred, and who may be organized as hereinafter provided, shall thereupon be constituted a corporation, under the name and style of The Covington and Ohio Railroad Company, according to the provisions of the Code of Virginia (edition eighteen hundred and sixty), for the government of incorporated companies, and not inconsistent herewith.

2. The said Covington and Ohio railroad company, when fully constituted and certified as hereinafter provided, shall have all the rights, interests and privileges, of whatsoever kind, in and to the Covington and Ohio railroad, and appurtenances thereto belonging, now the property of the state of Virginia, upon condition that it shall, within six months after its incorporation, as provided in the tenth section of this act, commence, and, within six years, complete, equip and operate a railroad from some point at or near Covington, Alleghany county, Virginia, and connecting with the Virginia Central railroad, by the way of the White sulphur springs and the valleys of Greenbrier river, New river and Kanawha river, to a point at or near the mouth of Scarey creek, and thence to the Ohio river. The said road to be constructed in a style at least equal to that of the Virginia Central railroad, and with grades not higher than those adopted by C. B. Fisk, Esquire, the former engineer of the Covington and Ohio railroad. But this grant is not intended to include the unexpended amount heretofore appropriated by the state of Virginia to this work.

3. The said Covington and Ohio railroad company shall have the right to construct a branch from its main line, to connect with the Virginia and Tennessee railroad at such points as it may deem most expedient; and the said company is hereby empowered to acquire real property necessary for the construction of the said railroad and of the said branch.

4. The capital stock of the company shall not be less than three millions of dollars nor more than twelve millions, in shares of one

hundred dollars each; but if necessary to augment the capacity of said road, the capital may, from time to time, by a vote of two-thirds of the stockholders, be increased to an amount not exceeding twenty millions of dollars; and each stockholder shall be entitled to one vote for each share of his stock.

5. The stockholders, at their first meeting, shall elect directors, who, a majority thereof being necessary for a quorum, shall elect a president (from their own body), and shall appoint all other officers and agents, make by-laws, and transact all business necessary to promote the purposes of the corporation.

6. The president and directors may create indebtedness, in the manner prescribed by the by-laws, for the purchase of materials, the construction and equipment of said railroad, and for all other necessary purposes.

7. The rates of charge by said company, for passengers and freight transported on the main line and branches of said railroad, shall never exceed the highest allowed by law to other railroads in the state of Virginia; and no discrimination shall be made in such charges against any connecting railroad or canal company in which the state has an interest; and the right is reserved to the state of Virginia to connect, at any point within its limits, with said railroad, or any of its branches, any canal or railroad in which the state has an interest; and no taxation upon the property of said company shall be imposed by the state until the profits of the company shall amount to ten per centum a year on its capital.

8. If said company shall fail to commence work or to put the road in operation within the times specified in the charter, then the franchise hereby granted shall revert to the state of Virginia, and the commissioners hereinafter named shall take possession of the said road, after serving due notice, in writing, on the president of said company, that the said reversion and repossession is claimed.

9. John B. Baldwin, George W. Bolling, Thomas S. Flournoy, R. H. Maury and William J. Robertson are hereby appointed commissioners, to act on the part of the state of Virginia; but should a like number be appointed by the state of West Virginia, then (in that case) to act in conjunction with the same, whose duty it shall be to offer the benefits of this charter for the acceptance of capitalists, so as to secure the speediest and best construction, equipment and operation of said railroad. To this end, they are hereby empowered to make a contract with any parties who shall give the best terms and the most satisfactory assurances of capacity and responsibility, and to introduce into said contract any additional stipulations for the benefit of the state and in furtherance of the purposes herein declared, and not inconsistent with this act; which said contract shall be, to all intents and purposes, as much a part of this charter as if the same had been herein included at the time of the passage of this act: provided that no act of the said commissioners, whether acting by themselves

or in conjunction with commissioners to be appointed by the state of West Virginia, shall be valid or effectual, unless approved and voted for by at least three of the commissioners appointed by this act.

10. The certificate of the said commissioners of the due execution of the said contract, and the organization of the said company, shall operate to confer upon said company all the benefits of this charter, subject only to the general provisions of the Code of Virginia for the government of internal improvement companies, so far as the same may not be inconsistent herewith.

11. Should the forfeiture provided for in the eighth section occur, the said commissioners may make a new contract with any other parties, as though no former contract had been made.

12. The said commissioners may receive from the treasury of the state their necessary expenses incurred in the execution of the duty herein imposed upon them, and shall not directly or indirectly, receive any emolument from, or have any interest in any company created by this charter.

13. The governor of the commonwealth shall, upon the passage of this act, immediately communicate the same to the governor of West Virginia, and respectfully request that it be submitted to the legislature of that state for such action as it may deem necessary to carry out the objects and purposes of this act.

14. This act shall be in force from the day of its passage, and that the act passed February thirteenth, eighteen hundred and sixty-two, at Wheeling, entitled an act to incorporate the Charleston and Winchester railroad company, be and the same is hereby repealed.

[W. Va.]

CHAP. 131.—An ACT to incorporate the Covington and Ohio Railroad Company.

Passed March 1, 1866. 127

Be it enacted by the Legislature of West Virginia:

1. That the persons upon whom the benefits of this charter may be hereafter conferred, and who may be organized as hereinafter provided, shall thereupon be constituted a corporation, under the name and style of "The Covington and Ohio Railroad Company," according to the provisions of the code of Virginia, second edition, for the government of incorporated companies and not inconsistent herewith.

2. The said Covington and Ohio railroad company, when fully constituted and certified as hereinafter provided, shall 128 have all the rights, interests and privileges of whatsoever kind, in and to the Covington and Ohio railroad, and appurtenances thereto belonging, now the property of the State of West Virginia.

upon condition that it shall, within six months after its incorporation as provided in the tenth section of this act, commence and within six years complete, equip and operate a railroad from some point at or near Covington, Alleghany county, Virginia, and connecting with the Virginia Central railroad, by the way of the White Sulphur Springs, and the valleys of Greenbrier river, New river and Kanawha river, to a point at or near the mouth of Scary creek, and thence to the Ohio river, with the right to adopt the line of the West Virginia Central railway from Charleston to the Ohio river, upon such terms as may be agreed upon with the said West Virginia railway company. The said road to be constructed in a style at least equal to that of the Virginia Central railway, and with grades not higher than those adopted by C. B. Fisk, esquire, the former engineer of the Covington and Ohio railroad.

3. The said Covington and Ohio railroad company shall have the right to construct a branch from its main line to connect with the Virginia and Tennessee railroad at such points as it may deem most expedient, and the said company is hereby empowerd to acquire real property necessary for the construction of the said railroad and of the said branch.

4. The capital stock of the company shall not be less than three millions of dollars nor more than twelve millions, in shares of one hundred dollars each, but if necessary to augment the capacity of said road, the capital may from time to time, by a vote of two-thirds of the stockholders, be increased to an amount not exceeding twenty millions of dollars, and each stockholder shall be entitled to one vote for each share of his stock.

5. The stockholders at their first meeting shall elect directors, who, a majority thereof being necessary for a quorum, shall elect a president (from their own body) and shall appoint all other officers and agents, make by-laws and transact all business necessary to promote the purposes of the corporation.

6. The president and directors may create indebtedness in the manner prescribed by the by-laws for the purchase of materials, the construction and equipment of said railroad and for all other necessary purposes.

7. The rate of charge by said company for passengers and freight transported on the main line and branches of said railroad shall never exceed the highest allowed by law to other railroads in the state, and no discrimination shall be made in such charges against any connecting railroad or canal company chartered by the state, and no taxation upon the property of the said company shall be imposed by the state until the profits of said company shall amount to ten per cent on the capital of the company.

8. If said company shall fail to commence work or put the road in operation within the time specified in the second section, then the franchise hereby granted shall revert to the state, and the commis-

sioners hereinafter named shall take possession of the said road after serving due notice in writing to the president of said company, that said reversion and repossession is claimed.

9. George W. Summers, James Burley, Burton Despard, Joel McPherson and James O. Watson are hereby appointed commissioners to act on the part of the state of West Virginia, who shall act in conjunction with the commissioners appointed by the state of Virginia, whose duty it shall be to offer the benefits of this charter for the acceptance of capitalists, so as to secure the speediest and best construction, equipment and operation of said railroad. To this end they are empowered to make a contract with any parties who shall give the best terms and the most satisfactory assurances of capacity and responsibility, and to introduce into said contract any additional stipulations for the benefit of the state, and in furtherance of the purposes herein declared and not inconsistent with this act; which said contract shall be to all intents and purposes as much a part of this charter as if the same had been herein included at the time of the passage of this act. Provided, That no act of the said commissioners, whether acting by themselves or in conjunction with the commissioners appointed by the state of Virginia, shall be valid or effectual unless approved of or voted for by at least three of the commissioners appointed by this act.

10. The certificate of the said commissioners of the due execution of the said contract, and the organization of the said company, shall operate to confer upon said company all the benefits of this charter, subject only to the provisions of the code of Virginia, second edition, for the government of internal improvement companies, so far as the same may not be inconsistent herewith.

11. Should the forfeiture provided for in the eighth section occur, the said commissioners may make a new contract with any other parties as though no former contract had been made.

12. The said commissioners may receive from the treasury of the state their necessary expenses incurred in the execution of the duty herein imposed upon them, and shall not directly or indirectly receive any emolument from, or have any interest in any company created by this charter.

13. The governor shall, upon the passage of this act, immediately communicate the same to the governor of Virginia.

[W. Va.]

CHAPTER 93.—An ACT to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio River.

Passed February 26, 1867.

102

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful for the Covington and Ohio Railroad Company, which may be organized under the act passed by the General Assembly of Virginia, on the twenty-sixth day of February, eighteen hundred and sixty-six, and the act passed by the Legislature of West Virginia, on the first day of March, eighteen hundred and sixty-six, entitled "An Act to incorporate the Covington and Ohio Railroad Company," to consolidate with the Virginia Central Railroad Company, with the West Virginia Central Railway Company, with the Southside Railroad Company, with the Norfolk and Petersburg Railroad Company, or with one or more of said companies, upon such terms as may be agreed upon by the stockholders of the companies proposing to consolidate, in general meeting.

2 The companies which may consolidate under the provisions of this act shall constitute one corporation, which shall be vested with all the rights, privileges, franchises and property which may have been vested in either company prior to the act of consolidation, and shall be known as the Chesapeake and Ohio Railroad Company.

3. Should the consolidation of all the companies not be effected at the same time, it shall be lawful for the Chesapeake 103
and Ohio Railroad Company, when formed by two or more companies, afterwards to consolidate with the remaining company or companies.

4. It shall be the duty of said company, within six years after its organization, to complete the railroad from Covington to the Ohio river, in a style and with grades and curves not inferior to those adopted by C. B. Fisk, Esq., late chief engineer, in his report and plans of said work; and they may select the mouth of Big Sandy river or the mouth of the Great Kanawha river as the Ohio terminus of their road, or may construct a branch of their road to both points and may occupy the line of the West Virginia Central Railway Company, with its consent, from Charleston to the Ohio river, and upon terms to be agreed upon by said companies; and the said Chesapeake and Ohio Railroad Company shall have the right to construct an air line railroad from Richmond to Charlottesville, or to make such changes in that part of the Central Railroad which lies between said points as will shorten the same, and shall have all the powers conferred by the code and laws of Virginia which may be necessary for this purpose.

5. Should the Southside Railroad Company and the Norfolk and Petersburg Railroad Company, or either of them, become consolidated

with the Covington and Ohio Railroad Company, it shall be the duty of the consolidated company within the time agreed upon in the terms of consolidation, to construct a railroad from the terminus of the Southside Railroad at Lynchburg to Covington, or a suitable point of connection on the Virginia Central Railroad; and said company shall be vested with all the powers conferred by the code of Virginia to enable it to construct said railroad.

6. The state reserves the right to connect with the works of this company any other work of internal improvement, and no discrimination shall be made in the charges of said company against the trade and travel of any connecting work.

7. Said company may have a capital stock not exceeding thirty millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock, and may borrow such sums of money, at a rate of interest not exceeding eight per centum per annum, as may be necessary for the construction and proper equipment of its road, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same.

8. It shall be lawful for said company to acquire not exceeding five millions of acres of land in payment for subscriptions of stock or by purchase; provided, however, it shall not be lawful for said company, at the expiration of ten years after the completion of their road, to hold more land than shall be necessary for the use of the road.

9. Said company may elect such number of directors and provide for the election or appointment of such officers and agents as it may decide to be necessary for the management of its affairs.

10. Each stockholder shall have one vote in the meetings of the stockholders, for every share of stock held by him. 104

11. Should a vacancy at any time occur in the board of commissioners of the Covington and Ohio Railroad from the death, resignation or disability to act, of any of its members, it shall be the duty of the governor of the state in which such member resided to fill the vacancy by a new appointment.

12. It shall be lawful for the commissioners to cause books of subscription to the stock of the Covington and Ohio Railroad Company to be opened at such places and under the direction of such agents as they may appoint, with the view of organizing a company to accept the charter of the Covington and Ohio Railroad, and construct said railroad.

13. The said Chesapeake and Ohio Railroad Company shall have the right, at any time within two years after its organization, to purchase the stock held by the State of Virginia at the date of the purchase in said company, by transferring to the board of public works of Virginia, bonds of the State of Virginia, for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe to the State of Virginia at the date of payment, on account of loans made to any of the companies which may have con-

solidated, by surrendering to the board of public works of Virginia, State bonds for an amount equal to the debts proposed to be paid, and may also purchase the right of the State of Virginia in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central Railroad Company; said amount to be ascertained by the commissioners of the Covington and Ohio Railroad. It shall also be lawful for any stockholder in the Chesapeake and Ohio Railroad Company to purchase a part or the whole of the stock held by the State of Virginia at the time of purchase, in the company of which he is a stockholder, by transferring to the board of public works of Virginia, State bonds equal in amount to the stock proposed to be purchased. But nothing in this act contained shall be held to bind the State of West Virginia for any part of the debts of Virginia.

14. The Virginia Central Railroad Company and the West Virginia Central Railway Company, or either of them may contract with the Covington and Ohio Railroad commissioners for the construction of the railroad from Covington to the Ohio river, and in the event such contract be made, the said Virginia Central Railroad Company or West Virginia Central Railway Company, shall be known as the Chesapeake and Ohio Railroad Company and shall be entitled to all the benefits of the charter of the Covington and Ohio Railroad and to all the rights, interests and privileges which by this act are conferred upon the Chesapeake and Ohio Railroad Company when organized.

15. It shall be lawful for the board of supervisors of any county to take the sense of the qualified voters of their county upon the question of subscription of the stock of any company which may be authorized to construct the railroad from Covington, in the 105
State of Virginia, to the Ohio river; and, should three-fifths of the persons who may vote on such question, vote in favor of the proposed subscription, the said board of supervisors shall appoint an agent to subscribe for the amount of stock which may have been authorized by the vote of the county, and also an agent to negotiate a loan or loans in the name of the county, at a rate of interest not exceeding ten per cent per annum, for the purpose of paying such subscription of stock, and said board of supervisors shall be authorized to issue the bonds, coupon or registered, of the county for the amount of such loans; and said board of supervisors shall from time to time, assess and collect taxes upon the taxable subjects of their county sufficient to pay the interest upon such loans and the final extinction of the principal thereof.

16. James Burley, Z. D. Ramsdell, Harrison Hagans, Joel McPherson and John S. Cunningham are hereby appointed commissioners on behalf of West Virginia, in lieu of the commissioners appointed by the act passed March first, eighteen hundred and sixty-six, entitled

"An act to incorporate the Covington and Ohio Railroad Company," with all the powers vested in the former commissioners by said act, and said commissioners may act conjointly with the commissioners of Virginia or may act separately, but no act of the said commissioners whether acting by themselves or in conjunction with the commissioners appointed by the State of Virginia shall be valid or effectual unless approved or voted for by at least three of the commissioners appointed by this act.

17. It shall be the duty of the company which may be formed under this act to file, within thirty days after their organization, with the board of public works of Virginia and West Virginia, a duly certified and correct copy of the terms of consolidation.

[Va.]

CHAP. 280.—An ACT to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio river.

Passed March 1, 1867. 705

1. Be it enacted by the general assembly, That it shall be lawful for the Covington and Ohio railroad company, which may be organized under the act passed by the general assembly of Virginia, on the twenty-sixth February, eighteen hundred and sixty-six, and the act passed by the legislature of West Virginia, on the first day of March, eighteen hundred and sixty-six, entitled an act to incorporate the Covington and Ohio railroad company, to consolidate with the Virginia Central railroad company, with the Southside railroad company, with the Norfolk and Petersburg railroad company, or with one or more of said companies, upon such terms as may be agreed upon by the stockholders of the companies proposing to consolidate in general meeting.

2. The companies which may consolidate under the provisions of this act shall constitute one corporation, which shall be vested with all the rights, privileges, franchises and property which may have been vested in either company prior to the act of consolidation, and shall be known as The Chesapeake and Ohio Railroad Company.

3. Should the consolidation of all the companies not be effected at the same time, it shall be lawful for the Chesapeake and Ohio railroad company, when formed by two or more of said companies, afterwards to consolidate with the remaining company or companies.

4. It shall be the duty of said company, within six years after its organization, to complete the railroad from Covington to the Ohio river, in a style and with grades and curves not inferior to those adopted by C. B. Fisk, Esq., late chief engineer, in his report and plans of said work; and they may select the mouth of Big Sandy

river, or the mouth of the Great Kanawha river, as the Ohio terminus of their road, or may construct a branch of their road to both points; and may occupy the line of the West Virginia Central railroad company, from Charleston to the Ohio river, upon terms to be agreed upon by said companies; and the said Chesapeake and Ohio railroad company shall have the right to construct an air line railroad from Richmond to Charlottesville, or to make such changes in that part of the Central railroad which lies between said points as will shorten the same, and shall have all the powers conferred by the Code and laws of Virginia which may be necessary for this purpose.

5. Should the Southside railroad company and the Norfolk and Petersburg railroad company, or either of them, become consolidated with the Covington and Ohio railroad company, it shall be the duty of the consolidated company, within the time agreed upon 706
in the terms of consolidation, to construct a railroad from the terminus of the Southside railroad, at Lynchburg, to Covington, or a suitable point of connection on the Virginia Central railroad; and said company shall be vested with all the powers conferred by the Code of Virginia to enable it to construct said railroad.

6. Should the Chesapeake and Ohio railroad company refuse to consolidate with the Norfolk and Petersburg railroad company and the Southside railroad company, on application, it shall be lawful for the Norfolk and Petersburg railroad company and the Southside railroad company to consolidate upon such terms as may be agreed upon by the stockholders of said companies, and the consolidated company shall be known by the name of The Norfolk, Petersburg and Covington Railroad Company; and shall be vested with all the rights, interests, franchises and property which belonged to either company prior to the act of consolidation, and shall be authorized to extend their road from Lynchburg to Covington, or a suitable point of connection on the Virginia Central railroad, and shall have all the powers conferred by the Code and the laws of Virginia to enable it to construct said railroad; and said company may have a capital stock not exceeding fifteen millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock, and may borrow such sums of money as may be necessary, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same; and it shall be the duty of said company, within six years after its organization, to complete said railroad. The Chesapeake and Ohio railroad company, and the Norfolk, Petersburg and Covington railroad company, shall mutually furnish every facility for the transportation over their roads of tonnage and passengers coming from the road of one company to the road of the other company, and there shall be no manner of discrimination against trade and travel passing from the road of one of said companies to the road of the other company.

7. The state reserves the right to connect with the works of this

company any other work of internal improvements, and no discrimination shall be made in the charges of said company against the trade and travel of any connecting work.

8. Said company may have a capital stock not exceeding thirty millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock; and may borrow such sums of money, at a rate of interest not exceeding eight per centum, as may be necessary for the construction and proper equipment of its road, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same.

9. It shall be lawful for said company to acquire not exceeding five millions of acres of land, in payment for subscriptions of stock or by purchase: provided, however, it shall not be lawful for said company, at the expiration of ten years after the completion of their road, to hold more land than shall be necessary for the use of the road.

10. Said company may elect such number of directors, and provide for the election or appointment of such officers and agents as it may decide to be necessary for the management of its affairs.

11. Each stockholder shall have one vote in the meetings of the stockholders for every share of stock held by him.

12. Should a vacancy at any time occur in the board of commissioners of the Covington and Ohio railroad from the death, resignation, or disability to act of any of its members, it shall be the duty of the governor of the state in which such member resided, to fill the vacancy by a new appointment.

13. It shall be lawful for the commissioners to cause books of subscription to the stock of the Covington and Ohio railroad company to be opened at such places and under the direction of such agents as they may appoint, with the view of organizing a company to accept the charter of the Covington and Ohio railroad and construct said railroad.

14. The said Chesapeake and Ohio railroad company shall have the right, at any time within two years after its organization, to purchase the stock held by the state in said company, at the date of the purchase, by transferring to the Board of public works bonds of the state for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe the state at the date of the payment, on account of loans made to any of the companies which may have consolidated, by surrendering to the Board of public works state bonds for an amount equal to the debt proposed to be paid, and may also purchase the right of the state in and to the Blue ridge railroad by the surrender of state bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central railroad company, said amount to be ascertained by the commissioners of the Covington and Ohio railroad; and should the Norfolk, Petersburg and Covington railroad company be orga-

nized, it may, within two years after its organization, purchase any stock held by the state therein at the date of purchase, by the surrender of state bonds for an amount equal to the stock proposed to be purchased, and may pay any debt due the state on account of loans made to the companies comprising it, by a surrender of state bonds for an amount equal to the debt proposed to be paid. The stock which may be purchased from the state by either of said companies shall be cancelled. It shall also be lawful for any stockholder in either the Chesapeake and Ohio railroad company, or the Norfolk, Petersburg and Covington railroad company, to purchase a part or the whole of the stock held by the state, at the time of the purchase, in the company of which he is a stockholder, by transferring to the Board of public works, state bonds equal in amount to the stock proposed to be purchased. 708

15. The Virginia Central railroad company may contract with the Covington and Ohio railroad commissioners for the construction of the railroad from Covington to the Ohio river, and in the event such contract be made, the said Virginia Central railroad company shall be known as the Chesapeake and Ohio railroad company, and shall be entitled to all the benefits of the charter of the Covington and Ohio railroad, and to all the rights, interests and privileges which by this act are conferred upon the Chesapeake and Ohio railroad company when organized.

16. It shall be the duty of the company or companies which may be formed under this act, to file within thirty days from their organization, with the Board of public works of Virginia and West Virginia, a duly certified and correct copy of the terms of consolidation.

17. It shall be the duty of the governor to communicate a copy of this act to the governor of West Virginia, with the request that it be laid before the legislature of said state, in order that such concurrent legislation may be had on the part of that state as may be necessary.

18. This act shall be in force from its passage.

[W. Va.]

CHAPTER 3.—An ACT confirming and amending the charter of the Chesapeake and Ohio Railroad Company.

Passed January 26, 1870. 5

Be it enacted by the Legislature of West Virginia:

1. That the contract, dated August thirty-first, eighteen hundred and sixty-eight, made by commissioners of Virginia and West Virginia, with the Virginia Central Railroad Company, by which the Chesapeake and Ohio Railroad Company was formed, and under which it has been organized, be and the same is hereby approved, ratified, and confirmed as follows:

Contract with Commissioners for completing the Covington and Ohio Railroad.

The parties to the contract are:

First. The commissioners of the state of Virginia, under the following acts of the General Assembly, viz: 1st, "An act to incorporate the Covington and Ohio Railroad Company," passed February twenty-sixth, eighteen hundred and sixty-six. 2nd, "An act to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed March first, eighteen hundred and sixty-seven.

Second. The commissioners of the state of West Virginia, under the following acts of the Legislature, viz: 1st, "An act to incorporate the Covington and Ohio Railroad Company," passed March first, eighteen hundred and sixty-six. 2d, "An act to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed February twenty-sixth, eighteen hundred and sixty-seven. 3rd, "An act to amend and re-enact the fifteenth section of an act providing for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river, passed February twenty-sixth, eighteen hundred and sixty-seven," passed February sixth, eighteen hundred and sixty-eight.

Third. The Virginia Central Railroad Company:

The said commissioners of Virginia and West Virginia, by virtue of the authority given them by the statutes already referred to, and in order to secure the speediest and best construction, equipment, and operation of the said railroad from Covington to 6 the Ohio river, according to the true intent and meaning of the said statutes, have contracted therefor with the said Virginia Central Railroad Company as the party giving the best terms and the most satisfactory assurances of having the capital, capacity and responsibility contemplated and required by the said statutes, and have introduced into the said contract the following additional stipulation, proposed by the stockholders of the said Virginia Central Railroad Company in general meeting on the twenty-ninth day of November, eighteen hundred and sixty-seven, and accepted by the said commissioners as being for the benefit of their respective states and in furtherance of the purposes declared by the legislature aforesaid, viz:

I. The work to be commenced and completed in the time and manner provided in the charter.

II. The company to guarantee four per cent semi-annual dividends upon any stock which may be subscribed for the construction of said road, after the completion of the road to the Ohio river, and in the meantime said stock shall be preferred in any dividends which shall be declared by the company, to an extent not exceeding four per cent semi-annually.

III. The company to borrow such sums of money at a rate of in-

terest not exceeding eight per cent per annum, as may be necessary, in addition to the funds arising from stock subscriptions for the completion of said road, and to execute a lien on its property and resources to secure the payment of the principal and interest of such loans: Provided, that subscriptions may be received to be applied to the construction of the work continuously from either end of the line.

IV. The company may guarantee the payment of principal and interest of bonds of cities and counties, receivable in payment of subscription to stock.

V. That bonds of cities and counties at ninety cents on the dollar, and bearing eight per cent per annum interest, convertible into preferred stock, be received in payment of subscription to stock.

VI. Nothing contained in any contract made by this company shall have the effect to deprive the present creditors of the company of their claims for satisfaction out of the present property of the company, and it shall be the duty of the president and directors, before executing any further lien on the present property of the company, to secure by mortgage any portion of the funded or floating debt, not heretofore so received, that cannot be promptly paid off in the ordinary administration of the affairs of the company.

And the said Virginia Central Railroad Company having undertaken and contracted to construct the said railroad, on the terms and conditions aforesaid, it is hereby declared and certified that the said company shall hereafter be known as "The Chesapeake and Ohio Railroad Company," and is entitled to all the benefits of the charter of the Covington and Ohio Railroad, and to all the rights, interests, and privileges which, by the statutes aforesaid, are conferred upon the Chesapeake and Ohio Railroad Company, when organized.

In testimony whereof, the commissioners of Virginia and West Virginia have set their hands and seals; and the said Virginia Central Railroad Company has caused the corporate seal of the company to be affixed, with the signature of Edward Fontaine, president of said company, this thirty-first day of August, eighteen hundred and sixty-eight.

JOHN B. BALDWIN, [L. S.]
GEORGE W. BOLLING, [L. S.]
THOMAS S. FLOURNOY. [L. S.]
WM. J. ROBERTSON, [L. S.]

Commissioners of Virginia.

JAMES BURLEY. [L. S.]
Z. D. RAMSDELL. [L. S.]
JOEL MCPHERSON. [L. S.]
JOHN S. CUNNINGHAM, [L. S.]

Commissioners of West Virginia.

E. FONTAINE,
President of the Va. Central Railroad Company.

2. That the Chesapeake and Ohio Railroad Company, formed and organized under said contract, shall have all the rights, benefits and privileges, and be subject to all the duties and responsibilities provided and declared in the said contract, and in the legislation of the states of Virginia and West Virginia, therein referred to; except only that the said company shall be allowed for the completion of the road from Charleston, in the county of Kanawha, to the mouth of Sandy, in the county of Wayne, the same time that is given by the charter for completing the other portions of the work within this state.

3. That the general meetings of the said company may be held at any station upon the line of the road, and meetings of the directory at such places as the by-laws may prescribe.

4. That upon the completion of the road, if the said company shall not deem it expedient to establish its principal office within this state, its place of business at or nearest Charleston, in the county of Kanawha, shall, for all purposes required by law, be deemed to be such principal office within this state. And, until such completion, all notices and legal process shall be sufficiently served upon the company if delivered in person to the president, vice-president, or any director of the company, whether in this state or elsewhere.

ACTS RELATING TO STATE'S EXPENDITURES ON "KANAWHA IMPROVEMENTS."

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CHAPTER LVI.—An act to amend the act, entitled "an act for clearing and improving the navigation of James river," and for uniting the eastern and western waters, by the James and Kanawha rivers.

[Passed February 17th, 1820.] 39

Whereas it will be greatly beneficial to the good peopple of this Commonwealth to improve the navigation of the James and Jackson's rivers, from tide water to the mouth of Dunlap's creek, by navigable canals and locks, where necessary; to make a convenient road from thence to the great falls of the Kanawha river; and to make the last mentioned river conveniently navigable from the great falls thereof to the river Ohio. And, whereas there is reason to believe that the James River Company is willing to consent to such modifications of their charters as will enable the said company, as an agent acting and holding in trust for the benefit of this Commonwealth, to undertake and carry the said improvements into effect, in such manner as the General Assembly shall, from time to time, direct and require; and, under the direction and superintendence of such agent or agents as may from time to time be appointed for that purpose; by appropriating to these objects such sums of money as they may borrow, under the authority and by the direction of the General Assembly, and upon such terms as may be prescribed by law from time to time; and that the said company will moreover consent to apply all their surplus tolls and income of every kind which may accrue after the first day of January, eighteen hundred and twenty, from the works and property now belonging to them, or which they may hereafter acquire, to the payment of the interest on the money which they may so borrow, except only so much thereof, as may be necessary to defray the expenses of keeping their works now existing, or hereafter to be made, in complete repair, and all reasonable expenses necessary for collecting tolls, and managing all other affairs of the company; and, moreover, excepting so much of the said tolls and income as may be necessary to pay, in semi-annual instalments, a dividend upon the present stock of the said company, of twelve per centum per annum, for and during the term of twelve years from said first day of January, eighteen hundred and twenty, and fifteen per centum per annum from and after the expiration of the said term of twelve years, forever

thereafter; and that the said company will account for the said surplus tolls and income of every kind, to the General Assembly, and pay the same, at the time or times, and in the manner which the General Assembly shall direct; but upon the further condition that the General Assembly shall provide for making good any deficiency in the payment of the interest on any money so borrowed, which may remain to be provided for, after applying the surplus tolls and other income of the said company, with the exceptions aforesaid, to the payment of interest, as aforesaid:

1. *Be it therefore enacted*, That, if the James River Company shall, on or before the fifteenth day of March next, assent to the provisions of this act, by a resolution to that effect, entered on their journals, and certify the same to the Governor of this Commonwealth, who shall forthwith make proclamation thereof, then this act shall immediately commence and be in force; and shall thereafter be considered a compact between this Commonwealth and the said company; subject, however, at all times, to such change and modification, as the legislature may think proper to make; *Provided*, That no such change or modification shall be made as will take from the James River Company their right to the dividends, or any part of the dividends upon their stock, allowed to them by this act; and that no such change or modification shall be made as will take from those who may have loaned money to the said company, under the faith of this act, the security hereby pledged to them for the payment of the interest thereon.

2. *And be it further enacted*, That, in the event of the assent of said company, as aforesaid, the said company shall, during the present year, so far as their funds, hereinafter provided for, will enable them, and without delay, proceed to the execution, and steadily persevere to the completion, of the following works, and in the following order, that is to say: First, to render the Great Kanawha, from the great falls thereof to the Ohio river, navigable at all seasons of the year for boats drawing three feet water, according to the plan of the principal engineer, in his report to the Board of Public Works, made in January, eighteen hundred and twenty. Secondly, to improve the navigation of James river, from tide water to Pleasant's Island, by locks and navagable canals, affording at all seasons of the year at least three feet depth of water from tide water to said island, and so as to navigate conveniently boats carrying one thousand bushels of coal at all points below the highest point at which coal lands on James river are now known; and above such coal lands, by a canal, not less than thirty feet wide at top, and twenty feet wide at bottom, having, at all seasons of the year, not less than three feet depth of water, in every part thereof, according to the said report of the principal engineer, and make safe and convenient communications from the river, at such point or points as will afford ample accommodation to the coal trade. Thirdly to make the best road practicable, at an expense of one hundred

thousand dollars, from the mouth of Dunlap's creek, to the great falls of the Great Kanawha river, and to expend in the making of said road, in each of the two successive years, immediately following the completion of the aforesaid works, the sum of fifty thousand dollars; the said road to be made in the most direct practicable route, not to exceed in any part five degrees of declivity or acclivity, and to be made according to the suggestions of the said report of the principal engineer. Fourthly, to make navigable canals and locks from Pleasant's island to the mouth of Dunlap's creek, according to the suggestions of the 41 said report of the principal engineer, as nearly as may be. And fifthly, to make safe and convenient communications from the river, at such points as will afford ample accommodation to the trade on the river; the road aforesaid to be completed according to the provisions of the act, entitled, "An act prescribing certain general regulations for the incorporation of turnpike companies," dispensing, however, with the summer roads required by the said act, except clearing the same of timber; and the winter road shall be improved, as required by the said act, at least twenty-two feet wide, except in difficult places, but in no place less than eighteen feet wide; and the said company shall constantly keep said road in good repair: *Provided, however*, That, if the sum of one hundred thousand dollars should be insufficient to improve the road in the manner described in this section, then such further sums shall from time to time be appropriated as will be adequate to that purpose. The improvements aforesaid, and all others, which may be prescribed by the legislature, shall, from time to time, be made under the superintendence of such commissioner or commissioners, agent or agents, as the General Assembly shall from time to time appoint.

2. *And be it enacted*, That, to enable the James River Company to open and complete the aforesaid road, and to keep the same constantly in good repair, which they are hereby required to do, they shall be entitled to avail themselves of all the provisions in favor of turnpike companies, which are to be found in the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," as well for the condemnation of lands as for other purposes.

3. *And be it further enacted*, That, to enable the said company to acquire sufficient lands for the abutments of dams and bridges, or canal, locks, toll-houses, houses for keepers of locks, and other necessary purposes, it shall be lawful for them to purchase in fee simple, of the proprietors of such lands, a quantity thereof not exceeding two acres, for each abutment of a dam or bridge; not exceeding two acres where any lock or locks may be necessary; not exceeding two acres where any toll-house may be necessary; and not exceeding one hundred and fifty feet wide the whole length of any canal which may be necessary; and, in case of such purchase or purchases, to contract for and acquire the right of establishing any machinery and working the

same with the water from any canal or dam, so as not to impair the navigation by such use of water, and of again selling or leasing the same. And, in case the lands so necessary cannot be acquired by contract, that then the said company may proceed to have such necessary lands, according to the quantities aforesaid, or less at their discretion, condemned in the manner prescribed by the act, entitled, "An act prescribing certain general regulations for incorporating turnpike companies," for condemning land for the use of any turnpike road, changing the forms of proceedings as the nature of the case may require. And when damage may arise from the overflowing of the waters, occasioned by the works of said company, the same shall be assessed and paid in the same manner, varying the forms of the proceedings as the nature of the case may require. But, in case of such condemnation, the company shall only have the right of us- 42
ing the lands so acquired for the purpose of improving and for the convenient use of the navigation aforesaid, and the other purposes aforesaid, but may at any time thereafter acquire, by purchase, the right to use the same for machinery as aforesaid, or may at any time dispose of water power to the proprietor of the adjoining lands on such terms as they may agree upon, not endangering the navigation as aforesaid. And the said company shall have the right to enter on lands for laying out their canals, dams and other works, and in making examinations as to the best mode of improvement, in like manner as is allowed to turnpike companies by the act aforesaid. And if the said company should have occasion to carry materials for their works through the lands of others, or to deposit such materials on the lands of others, or to carry on any of their said works on such lands, and cannot contract with the proprietors of such lands for the privileges aforesaid, on reasonable terms, they may proceed to assess the value of such privileges, and acquire them as lands may be acquired as aforesaid, changing the forms of the proceedings as occasion may require. And in case any controversy shall arise in any county or other inferior court, in relation to the matters aforesaid, between the said company, their servants or agents, and others, the same shall be decided as soon as may be, having a due regard to justice, without regard to priority of other matters or suits upon the docket; and, in case of unreasonable delay herein in such court, such suit or controversy shall be removed by certiorari, in to the superior court having jurisdiction thereof, and there be speedily decided as aforesaid.

4. *And be it enacted*, That, so soon as the said works shall be completed in parts or sections, so as to be useful, the same shall forever thereafter be esteemed and taken as public highways for the transportation of all goods, commodities and produce whatsoever, upon the payment of such tolls as shall be prescribed by law; and the road, canals, locks, dams and other works, when perfected, with all tolls and other profits and emoluments arising therefrom, shall be, and the same are hereby vested in the said company as agents in trust for this

Commonwealth, and shall be deemed real estate, transferable only on the books of the said company, by the proprietor or proprietors, his, her or their agent or agents, duly authorised, and shall be forever exempt from the payment of any tax, assessment or imposition whatsoever.

5. *And be it enacted*, That, so soon as the improvements for the navigation of the Kanawha river shall be completed as aforesaid, from Slaughter's creek to the Ohio river, the said company shall be entitled to demand and receive, upon boats and commodities passing the said river, tolls at the following rates, that is to say: On salt, two cents per bushel; on bacon, twelve and a half cents per hundred weight; on every barrel of cider or beer, twenty cents; on every cask of linseed or other oil, ten cents; on every bushel of wheat, peas, beans, flax or hemp seed, one cent and a half; on every bushel of indian corn, oats, potatoes or apples, one cent; on every barrel of pork or beef, ten cents; on every barrel of flour, six and a fourth cents; on every bushel of indian meal, one cent; on every bushel of dried fruit, two cents; on every ton of hemp, potash, bar or manufactured iron, one dollar; every ton of pig iron or castings, forty-five cents; every hundred bushels of lime, one dollar; every chaldron of 43
coal, twenty-five cents; every hundred barrel staves or heading, one cent; every hundred hoop poles, one cent; every hundred cubic feet of plank or scantling, three cents; every hundred cubic feet of other timber, six cents; every hundred hogshead or pipe staves, two cents; every empty barrel, one quarter of a cent; on whiskey, apple and peach brandy, or other domestic spirits, fifty cents per barrel; on rum, wine, gin and french brandy, or other foreign liquors, three cents per gallon; every hundred weight of all other commodities or packages whatsoever, thirty cents; on every boat or vessel other than canoes, not having commodities on board, yielding a toll of at least one dollar and fifty cents, one dollar and fifty cents; and every canoe, having commodities on board, the rate of toll herein-before prescribed: *Provided*, That an empty boat, canoe or other vessel, returning, whose load has already paid tolls, shall return toll-free. Which said tolls shall be paid at or near the Tyler shoals, as the tolls of the James River Company are now payable and collectable by law; and the said company shall have all the remedies for recovering said tolls, as they now have by law for collecting and recovering their present tolls.

6. And, so soon as the said company shall have opened and improved the road aforesaid in sections, such as are specified in the act aforesaid, by the gradual expenditure of the said sum of one hundred thousand dollars, they shall be authorised to collect and receive, in the manner prescribed by the said act, tolls on the said road, in sections, to the amount of one half the tolls authorised by the said act, in relation to turnpike roads: and so soon as the said road shall be completed, according to the provisions of the said act, with the ex-

ceptions aforesaid, in sections, the said company shall be entitled to receive and collect thereon, the full tolls authorised by the said act.

7. And, so soon as the said canals and other works shall be completed, from tide water, to the highest point on James river, where coal is now raised, the said company shall be entitled to receive a toll of two cents per bushel, on all coal passing the same, or any part thereof, in lieu of the toll which they are now entitled to receive on coal.

8. And the General Assembly hereby pledge themselves, that, as the works aforesaid on the James and Jackson's rivers, and in the vallies of these rivers, shall progress, and shall contribute to reduce the expense of transportation, up or down the said rivers or canals, below the average price of transportation upon the said rivers, as they have been for the three years last past, they will authorise the said company to receive tolls thereon, in convenient sections, to the amount necessary, (with their other resources specified in this act, as applicable to the payment of interest on money to be borrowed by them,) for the payment of the interest on the money expended in such work; *provided*, that such additional tolls shall not exceed one third of the saving in transportation up and down the said rivers, which will accrue thereby to those who use the said improvements, taking the average price of transportation for three years last past, as the basis of the estimates.

9. *And be it enacted*, That fourteen commissioners be ap- 44
pointed, residing in the counties bordering on the James river and Jackson's river, for the purpose of ascertaining the average price of transportation, of the various commodities liable to toll, according to the terms of the charter of the James River Company, and all other commodities up and down the rivers aforesaid, for three years last past; that is to say, Daniel Warwick of the city of Richmond, William Trabue of Chesterfield, Tarlton Woodson of Goochland, Jacob Michaux of Powhatan, Francis B. Deane of Cumberland, John H. Cocke of Fluvanna, William J. Freeland of Buckingham, Robert Rives of Nelson, William Moon of Albemarle, John Horsley of Amherst, Richard Pollard of Campbell, Isaac Otey of Bedford, Robert White of Rockbridge, and James Cartmill of Botetourt. It shall be the duty of each commissioner, to enquire diligently and impartially, upon the oaths of such person or persons as may be well informed upon the subject, in their respective counties aforesaid, what has been the average price as aforesaid, of the transportation of all commodities up and down the said rivers, or otherwise, from and to Richmond, and from and to the principal landings and places of deposit on the said rivers, in the said counties respectively. And the said commissioner, in each of the said counties, shall forthwith return an account of such average prices ascertained as aforesaid, to the courts of the said counties respectively, to be there recorded, and shall moreover, return duplicates of said accounts to the president and directors of the James River Company.

to be recorded and preserved. To each of which accounts and duplicates, the said commissioner shall make affidavit that has justly, diligently and impartially discharged the duties prescribed by this act, and that such account, or duplicate, is the result of these inquiries. The said commissioner shall proceed to the execution of the duties aforesaid, as soon as he shall be required by the James River Company; and, in case of a vacancy occurring from any cause, it shall be supplied by the court of the county in which it shall happen.

10. *And be it further enacted*, That, from and after the period at which the said company holding, as an agent, in trust for the benefit of the Commonwealth, shall give their assent as aforesaid to this act, they shall not be obliged to work on the bed of James river as heretofore, except so far as may be necessary to render the navigation from the upper locks to Lynchburg as easy and equal in every part as may be practicable; and the said company shall, at all times hereafter, keep the bed of the river, above the point to which any new improvement contemplated by this act shall be completed for use and connected with the river and below Crow's ferry, as good and convenient for navigation as it now is, and as it will be after the repairs aforesaid shall be made: all which repairs are to be contracted for and made by the company, from time to time, under the control, direction and superintendence of the commissioners, on the part of the Commonwealth, for superintending the works aforesaid on the James and Jackson's rivers hereafter mentioned, or of such other commissioner or commissioners, superintendent or superintendents, as the legislature may appoint; except so far as the said company shall undertake said repairs before they shall have received directions from the commissioners aforesaid. And, so soon as the said company shall have assented to the provisions of this act, the writ of *quo warranto* depending against them at the instance of the General Assembly shall be dismissed.

11. *And be it enacted*, That nine commissioners shall be annually appointed by joint ballot of the General Assembly, for superintending the works aforesaid on the Kanawha river, and the road aforesaid; who shall be denominated "the commissioners for the Kanawha river and road;" the acts of a majority of whom shall be in all cases obligatory. And nine commissioners shall be annually appointed, by joint ballot of the General Assembly on behalf of this Commonwealth, for superintending the works aforesaid, on the James and Jackson's rivers; the acts of a majority of whom shall be in all cases obligatory. No contract or contracts made by the James River Company for improving the navigation of the Kanawha river and road, shall be binding, or carried into effect, until the same shall be submitted to and approved in writing by the commissioners named to superintend the works on said river and road; and no contract or contracts made by the said company for making any of the improvements on the James or Jackson's rivers, shall be obligatory or carried into effect until

the same shall be submitted to and approved, in writing, by the commissioners named to superintend the works on the last mentioned rivers, who shall be denominated "The Commissioners for the James and Jackson's Rivers." And the said company shall semi-annually lay before the last mentioned commissioners an account of their receipts and disbursements, to be by them examined, stated and settled, after comparing the same with the books and vouchers of the company, and be reported by them to the General Assembly and to the Board of Public Works: *Provided, however,* That the boards of commissioners, hereby appointed to superintend the Kanawha river and the road, and the James and Jackson's rivers, may from time to time, adopt such rules and regulations for the distribution of the powers and duties hereby assigned them, amongst the members thereof, as they may think proper.

12. *And be it further enacted,* That the treasurer of the state shall be ex-officio treasurer of the company, shall be liable, as such, to the same penalties and conditions, as he is, as treasurer of the Commonwealth, and shall give additional security, in the sum of two hundred thousand dollars, for his faithful discharge of the duties hereby imposed.

13. And, to the end that adequate funds may be provided for the purpose of completing the works aforesaid: *Be it enacted,* That it shall be lawful for the James River Company, and they are hereby required to borrow, annually, after the fifteenth day of March next, from such individuals or corporate bodies, as may be disposed to lend, at an interest not exceeding six per centum per annum, payable semi-annually, two hundred thousand dollars, or such greater or less sum as may be hereafter directed and authorised by law; and in such proportions, and at such periods of the year as the said company shall deem expedient, to be applied to the execution of the works and improvements aforesaid, or such other works and improvements as the General Assembly shall hereafter direct; which authority and obligation shall continue until it shall be otherwise directed by law. The said Company shall issue certificates, under their common seal, (which, for this and all other purposes they are hereby authorised to have and use,) for the money so borrowed, and register the 46
same; which certificate shall specify the sum borrowed, of whom borrowed, and to whom payable; the interest payable thereon; that the stipulated interest shall be paid semi-annually on the fifteenth day of July and the fifteenth day of January in each year; and that the principal sum so borrowed, shall be irredeemable for twenty years from and after the fifteenth day of March next, and, from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly. Each payment of interest shall made upon the production of the said certificates and not otherwise; and such payments shall be noted on the back of such certificate. Said certificates shall be transferable only on the books

of the said company by the person or persons, or corporate bodies entitled thereto, or by their agents legally qualified for that purpose. The tolls and all other income of the said company, (after setting apart so much thereof as may be necessary to discharge all expenses of repairs, of the collection of tolls, and other necessary expenses of conducting the affairs of the said company; and also so much thereof as may be necessary to pay to the stockholders of said company, for twelve years next after the first day of January, eighteen hundred and twenty, a dividend of twelve per centum per annum on their stock, in semi-annual payments, and for ever thereafter a dividend in like manner of fifteen per centum per annum,) shall be applied to the payment of the interest on money so borrowed; and the surplus of such tolls and other income, after the payment of the expenses, dividends and interest, as aforesaid, shall from time to time be paid into the treasury of this Commonwealth, to the credit of the fund for internal improvement, to be disposed of as may, from time to time, be directed by law. And, if, at any time, the said company shall fail or refuse, or the tolls and other income aforesaid, after making the deductions aforesaid, shall be insufficient to pay the interest due upon said certificates, upon demand, the holder of such certificate shall cause a protest to be made, by a notary public, stating such demand and refusal, and thereupon the president of the Board of Public Works shall, immediately upon the production of such certificate and protest, issue his order, countersigned by the secretary of said board, authorising the payment of such interest out of the income of the fund for internal improvement; and the auditor of public accounts shall thereupon issue his warrant upon the treasurer therefor, and endorse such payment upon the back of such certificate. And so much of the income of the fund for internal improvement as may be necessary for the payment of such interest, unpaid by the said company from time to time, is hereby pledged for that purpose in preference to any other object: *Provided, nevertheless,* that such pledge shall not exceed twelve thousand dollars per annum, to be taken from the income of said fund.

14. *And be it further enacted,* That, for all such payments made out of the income of the fund for internal improvement, before the works on the James river shall be completed from tide water to Lynchburg, the said company shall deliver to the president and directors of the Board of Public Works certificates of debt, as aforesaid, carrying interest at six per centum per annum, payable semi-annually: but the interest not to commence thereon until the works shall have been completed as aforesaid to Lynchburg. And for all 47
such payments made, after the works aforesaid shall have been completed to Lynchburg, like certificates shall be issued, and the interest thereon shall commence from and after the date when the whole of the works aforesaid, or such other as the General Assembly shall hereafter direct in lieu of any part of them, shall be completed.

15. *And be it further enacted*, That the surplus of the tolls and income of the company aforesaid, remaining after the payment of interest due upon the certificates of debt so issued from time to time by the said company, and paid into the treasury of this Commonwealth, as herein-before directed, shall, from time to time, be applied by the president and directors of the Board of Public Works, to the purchase of such of the certificates aforesaid of debt as can be purchased. And the interest accruing on the said certificates of debt, so purchased, shall also, from time to time, be invested as aforesaid; and the whole so purchased shall be held subject to be disposed of as the General Assembly shall from time to time direct.

CHAPTER 46.—An act to amend the act, entitled, "an act to amend the act for clearing and improving the navigation of James River, and for uniting the Eastern and Western Waters, by the James and Kanawha Rivers."

48

[Passed February 28th, 1821.]

Whereas it is the opinion of this General Assembly, that the coal trade on the James river, and the salt trade on the Great Kanawha river, ought to be fostered and encouraged; and it being represented that the tolls to be received by the James River Company on those articles, when certain improvements in the navigation of those rivers shall have been made as provided for by the act, entitled, "an act to amend the act, entitled, an act for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers," may be found to be burthensome on both or one of those articles; and whereas it is expedient at this time to provide a remedy for such evil, should it, on experience, be found to arise:

1. *Be it therefore enacted*, That, until improvements contemplated by the above recited act, shall be completed, and the stock issued by the company for loans of money, shall be purchased in, as provided for by said act, or otherwise redeemed, the tolls on those 49
articles respectively, shall not be less than one cent per bushel; but that it shall be lawful for the said company, from time to time, as to them it may seem meet and expedient, and until it shall otherwise be regulated by law, to graduate the same respectively, by raising or lowering the said tolls, so that the same be not less than one, nor more than two cents per bushel.

2. The tolls on coal shall be receivable by the said company so soon as the trade in that article shall be facilitated, agreeably to the provisions of said act, should that happen before the improvements contemplated thereby shall have proceeded as high up the river as Pleasant's island.

And whereas it is represented, that many of the commissioners in and by the ninth section of the act above recited, have failed to perform the duties assigned to them in and by the said section; and whereas it is highly necessary that those duties should be promptly performed:

3. *Be it further enacted,* That the James River Company shall forthwith again require and notify the commissioners so failing, to proceed to execute the duties assigned to them as aforesaid; and that in case of the death, refusal, or inability to act, or continued failure of the said commissioners, or any of them, or of any commissioner or commissioners appointed in pursuance of this act, to perform the said duties, the said company are hereby empowered to appoint some other fit person or persons for that purpose, in the place of such commissioner or commissioners, so dead, refusing, unable, or failing to act, and who, being notified of his appointment, and not thereupon refusing to act, shall immediately proceed to perform the duties assigned to the commissioner, in and by the section above recited, whom he or they shall respectively be appointed to substitute as aforesaid.

4. *Be it further enacted,* That, instead of nine commissioners for superintending the works on Kanawha river and the road, as is provided by the eleventh section of the act above recited, there shall be five commissioners annually appointed, by joint ballot of both Houses of the General Assembly, for superintending the works contemplated by the said act, on the Kanawha; and that, in like manner there shall be appointed annually five commissioners for superintending the works on the road contemplated by said act; the acts of a majority of whom respectively, shall, in all cases, be binding; and no contract or contracts, made by the James River Company, for improving the navigation of the Kanawha river, or for making the road aforesaid, shall be binding, or carried into effect, until the same shall be submitted to and approved in writing by a majority of the commissioners appointed to superintend the works on the said river and road respectively.

5. *Be it further enacted,* That hereafter the James River Company shall semi-annually, to-wit; on the tenth day of July and tenth day of January in each year, lay an account of their receipts and disbursements before the treasurer of the state, the auditor of public accounts, and the clerk of the board of public works, instead of laying the same before the commissioners for the James and Jackson's rivers, as directed by the above recited act, to be by them, or a majority of them, examined, stated and settled, after comparing the same with the books and vouchers of the company, to be reported by them to the General Assembly, and to the board of public works.

6. And whereas it has been found inexpedient for the treasurer of the state to be treasurer of the said company: *Be it further enacted,* That the president and directors of the James River Company, shall, from time to time, appoint some fit person to act as their

clerk and treasurer, who shall hold his said officers at the will and pleasure of the said president and directors, and receive such compensation for his services, so long as he continues in their employment, as they shall from time to time ordain and appoint. He shall take an oath before some justice of the peace, that he will truly and faithfully execute the said offices; and shall moreover enter into bond, with one or more good sureties, payable to the company, and conditioned for the faithful discharge of the duties of said offices, and the payment of all monies according to law, which may come to his hands as treasurer, so long as he continues in said offices; which bond shall be in the penalty of thirty thousand dollars. It shall be the duty of the said treasurer to make weekly settlements and payments into such bank or banks in the city of Richmond, as the president and directors shall direct, to the credit of the James River Company, of all tolls receivable at the city of Richmond, and shall in like manner pay into bank all other profits and revenue of the said company, so soon as the same shall be received by him, there to remain, subject only to such order or check as the president and directors, by a resolution or resolutions entered on their journals, shall, from time to time, make and direct.

7. *And be it further enacted,* That all monies borrowed by the company, by virtue of the above recited act, of this or any other act of Assembly, shall be paid by the lender or lenders thereof into such bank or banks within the United States, to the credit of the James River Company, as the president and directors may agree upon with the lender or lenders thereof; and, when such payment is made into a bank or banks, not within the city of Richmond, it shall be the duty of the president and directors, from time to time, to adopt such measures as to them shall seem most proper, by a resolution or resolutions for that purpose entered on their journals, to have the same drawn and deposited to the credit of the company, in such bank or banks in the city of Richmond, as they may direct, there to remain for the use of the company, and only to be drawn for that purpose by a resolution or resolutions of the president and directors, entered on their journals, authorising one or more of their body to check therefor, and which check or checks shall be accompanied by a copy of such resolution or resolutions, certified by their clerk to the cashier of the bank on which such checks shall be drawn.

8. And the more effectually to enable the James River Company to borrow money as directed by the thirteenth section of the act above recited, or as may be directed by this or any future act of Assembly; *Be it further enacted,* That, hereafter, the company shall borrow no money agreeably to the section above recited, except so far as they shall be expressly authorised by act of Assembly fixing the amount so to be borrowed; and that each lender shall have a prior lien on the funds provided, or which may be provided, for the pay-

ment of interest on loans, in conformity with the date and number of his certificate of stock: and that the evidence of such lien may be fixed and preserved, it shall be the duty of the James River Company to number, and register the number, as well as the date, of each certificate of stock; and that no two certificates shall bear the same number; and the date and number shall be preserved on any duplicate of any certificate, which, by reason of a sale and transfer, or otherwise, it may be proper for them to give: and it shall moreover be their duty so to provide that the funds aforesaid shall be applied to the payment of the interest, as the same shall become payable on each certificate of stock, agreeably to its date and number; and that the certificate issued to the president and directors of the literary fund, be number one. And, for the further security and satisfaction of lenders, and as evidence to them of the ability of the company to pay the interest on loans which may be authorised by law, the faith of the state is hereby pledged, that no loan will be authorised by law unless it shall appear to the satisfaction of the legislature, from the annual reports of the accounts and proceedings of the company, that their revenue, applicable to the payment of interest, together with the appropriation made for that purpose out of the fund for internal improvement, is sufficient, not only to pay the interest on loans theretofore authorised, but on each loan as the same shall be authorised; and, in case of any deficiency of funds for that purpose, it shall be the duty of the company to pay such deficiency out of any money in hand, or to borrow money for that purpose. 51

9. *Be it further enacted*, That, instead of limiting the sum to be drawn from the fund for internal improvement to twelve thousand dollars per annum, as is provided by the thirteenth section of the act aforesaid, that fund shall stand pledged, as is provided in and by the said section, for the payment of any interest which the surplus fund of the company, applicable to the payment of interest, shall be insufficient to pay; *provided*, the same shall not exceed the sum of eighteen thousand dollars per annum. And, to avoid expense and embarrassment to lenders by the protest made necessary in and by the said section before they can receive the interest due and payable out of the fund aforesaid, the president and directors of the company are hereby authorised to draw an order or orders on the auditor, for a warrant or warrants on the treasury, for any interest payable out of that fund, after the proper funds of the company for that purpose shall be exhausted.

10. *And be it further enacted*, That, if that part of the fund for internal improvement appropriated to the payment of interest, or any part of it, has not been, or shall not be drawn for the payment of interest in any one year, that the same shall be set apart, from time to time, in like manner with the other surpluses of the company, to be applied to the purchasing the certificates of loan of the company as is directed in and by the said act.

11. *And be it further enacted,* That the said company be authorised, as they are hereby authorised, to proceed to borrow, agreeably to the provisions of this and the above recited act, at such times and in such proportions as they may deem expedient, a sum, not exceeding in the whole three hundred thousand dollars, exclusive of the fifty thousand dollars already borrowed from the literary fund; and that the bank of Virginia and Farmers' bank of Virginia, be authorised 52 to loan money to the company, or to deal in the certificates of loan of the company, as far as the president and directors of those banks, respectively, may think proper.

12. And, whereas the urgent necessities of the country require as prompt an execution of the improvements contemplated by the act above recited, as is practicable, whilst at the same time their economical prosecution will be greatly advanced by contracts amounting in the aggregate to a large sum; which contracts, however, cannot be made, with a proper regard to punctuality and good faith on the part of the company, unless they have the certain command of money to the amount of such contracts: *Be it further enacted,* That it shall be lawful for the president and directors to employ such agents for negotiating loans, and to give them such compensation therefor, as they may from time to time deem most economical and expedient; and should large sums be borrowed, which would necessarily lie idle until wanted for the payment of contracts, whereby great loss of interest would accrue, the president and directors are furthermore empowered to invest said funds, until wanted, in such secure and productive stock as they may think proper and expedient, and again to sell the same when their necessities may require, and carry the whole proceeds of the interest on, and the amount of sales of, such stock, to the account of monies loaned, to be placed in bank as aforesaid, and applied to the improvements aforesaid.

13. *And be it further enacted,* That the commissioners for superintending the works on the James and Jackson's rivers, on the Kanawha river and the road, shall receive three dollars per day, for every day they shall severally be employed in the discharge of the duties assigned them by said act; to be paid by the James River Company, on a certificate from a board of said commissioners, respectively.

14. This act shall commence and be in force from the passage thereof.

CHAPTER 45.— An act making more effectual provision to carry into effect, the act, entitled "an act, to amend the act, entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

50

[Passed February 24th, 1823.]

Whereas, by an act passed on the 17th day of February one thousand eight hundred and twenty, entitled "an act to amend the act, entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters by the James and Kanawha rivers," the James river company were directed to effect a canal navigation from the tide water of James river, to the mouth of Dunlap's creek; to make a road from thence to the great falls of the great Kanawha river, and to render the latter river navigable from the great falls to the river Ohio; and the present General Assembly, being fully sensible of the great interest which the good people of this commonwealth have in the success of the said objects, deem it necessary to adopt a more effectual mode to give them effect, than that heretofore provided,

1. *Be it therefore enacted*, That from and after the commencement of this act all the powers and duties of the existing president and directors of the James river company, except as hereinafter provided, shall be superseded and annulled, and thereafter no other election of president and directors shall be made in the manner now provided by law; but the governor, lieutenant governor, treasurer and auditor of commonwealth for the time being, and the second auditor, whose office is created by this act, and their successors in office, shall be ex-officio the president and directors of the said company; of whom the governor shall be president; and the said governor, lieutenant governor, treasurer, auditor and second auditor, from the time aforesaid, as president and directors of the said company, shall succeed to and possess all the rights, powers, duties and privileges of the existing president and directors, except so far as may be otherwise provided by this act. A board for the transaction of the business of the said company shall be constituted by any three, or more of the said officers. In the absence of the governor from the board, the lieutenant governor shall be president pro tempore; and in the absence of both, the treasurer shall preside.

2. *And be it further enacted*, That there be appointed annually, by joint ballot of both houses of the General Assembly, an officer to be denominated the second auditor, whose duty it shall be to keep distinct accounts of the receipts and disbursements of the Literary Fund, of the fund for internal improvement, and of the fund consti-

tuted to effect the purposes of the act, the title of which is recited in the preamble to this act. He shall draw all warrants authorising the treasurer to receive monies on account of any of the fund before mentioned, after the amount shall have been adjusted by the other auditor, when by law, he is authorised to adjust the same, and audit all claims properly chargeable on them, and issue warrants to the persons entitled thereto. He shall act, ex-officio, as accountant of the Literary Fund, as clerk of the president and directors thereof, and as secretary of the Board of Public Works; and the powers and duties of the persons holding those offices, respectively, shall thenceforth cease. And the said second auditor is hereby authorised to 51 appoint a clerk should the board of directors hereby established deem one necessary, to aid him in the discharge of his duties. All books and papers in any manner connected with the constitution, administration or regulation of the funds herein before mentioned, shall be deposited with the said second auditor, who shall carefully preserve them.

3. All monies belonging to any of the funds herein before mentioned, shall be kept in the public treasury, separate from other public monies; and regular and distinct accounts shall be kept of the receipts and disbursements, and a report thereof annually made by the treasurer to the General Assembly, on or before the fifth day of its session.

4. It shall be the duty of the James river company, forthwith, to pay into the public treasury any money which may remain in their hands, whether the same has been received from loans, tolls, rents, or otherwise; and they shall file with the second auditor, an account of their receipts and disbursements since the commencement of the act herein-before mentioned, which he shall carefully preserve: And all monies hereafter accruing to the said company, whether for tolls, rents, loans, or otherwise, shall be accounted for, by the several collectors and other agents, with the second auditor, and paid upon his warrant into the treasury: *Provided, however*, That if existing engagements with any toll gatherer, collector, or other agent, shall require the money falling into his hands to be otherwise accounted for and paid, it shall accordingly be accounted for and paid pursuant to such engagement; and the person receiving it shall, without delay, account for it with the second auditor, and pay it into the treasury, as above prescribed.

5. *Be it further enacted*, That the president and directors of the James river company shall, without delay, proceed to borrow, from time to time, as they may deem it prudent, at an interest not exceeding six per centum per annum, so much of the three hundred and fifty thousand dollars, which they have been heretofore authorised by law to borrow, as has not yet been borrowed; and if the president and directors should find it necessary to the completion of the three first sections of the work described in the second section of the act recited

in the preamble to this act, that is to say, to render the Great Kanawha navigable from the falls to the Ohio; to improve the navigation of James river from tide water to Pleasant's island; and to make the road from the mouth of Dunlap's creek to the Great Falls of Kanawha, together with the bridges provided for by this act; then, and in that case only, they are hereby authorised and required to borrow an additional sum not exceeding eighty thousand dollars. And to enable them the more readily to procure the said loans, they are hereby authorised and required, to cause all the monies, which shall be so loaned to them, to be paid into the public treasury, by the lender, on the warrant of the second auditor; and, upon the payment of each sum so loaned, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the commonwealth owes to such lender, his executors, administrators or assigns, the sum loaned, together with interest thereon, at the rate agreed upon, not exceeding six per centum as aforesaid, and payable semi-annually, at the treasury of the commonwealth, computing the time from the date of the certifi- 52
cate. Such certificate shall also shew, on its face, that the loan was made by authority of this act; that the principal sum loaned is irredeemable for twenty years; and afterwards to be redeemed at the pleasure of the General Assembly. It shall be signed by the treasurer, countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and shall then be delivered to the lender, or his agent. Every such certificate of stock shall be transferrable on the books of the second auditor; and the semi-annual interest thereon shall be paid upon his warrant. The certificates of stock for monies heretofore borrowed by the James river company, may be produced by the owners to the second auditor; and shall thereupon be registered by him in a book to be kept for that purpose; and at all times afterwards, they shall be transferable on the books of the said auditor. The interest falling due on such certificates, after they shall have been so registered, shall be paid at the treasury, on the warrant of the second auditor, without the re-production of the certificate; and the interest, falling due on them before such registry, shall be paid at the treasury, on the warrant of the second auditor, to be granted on the production of the certificate. The tolls collected on James river since the fifteenth day of March, eighteen hundred and twenty, and those which may hereafter be collected, the nett proceeds of the tolls to be collected on the Great Kanawha river, and from the road and bridges, all water rents, and rents of land, to which the James river company is or shall be entitled, together with the annual sum of eighteen thousand dollars to be paid out of the revenue of the fund for internal improvement, are hereby pledged as a fund for the payment of the dividends to the stockholders of the James river company, and the payment of the interest on the loans heretofore made to said company pursuant to law, and hereafter to be made pursuant to this act; and no part of the said fund shall be diverted to any other pur-

pose: And the General Assembly, moreover, pledge themselves, that they will from time to time, provide such other revenues as shall be necessary, to pay the interest on any loan authorised by law, to carry into effect the improvements mentioned in this act.

6. Nothing in this act shall be in any wise construed, so as to take away, or in any manner impair, the security or preference pledged to those who have heretofore loaned money, by authority of law, to the James river company.

7. *Be it further enacted*, That deeds for the transfer of any share or shares of the stock of the James river company, held by any person, body politic or corporate, executed in the manner prescribed by law for the conveyance of real estate, attested and proved by two witnesses, or certified by justices of the peace, in the manner prescribed for the authentication of deeds for real estate, and registered in the office of the second auditor, in a book to be kept by him for that purpose; also, devises of such share or shares, duly executed, proved and recorded, in some court within this commonwealth, certified and registered in the second auditor's office, in the manner aforesaid, shall be sufficient to entitle the transferree or devisee, to the dividends on such shares.

8. The dividends due, or to fall due, to the owners of the shares of the stock of said company, shall be paid at the treas- 53
ury, on the warrant of the second auditor.

9. *Be it enacted*, That an officer be appointed annually by joint ballot of both houses of the General Assembly, to be denominated the commissioner of the James and Jackson's river canal, whose duty it shall be to execute the provisions of the said act, so far as respects the construction of locks, navigable canals, and other necessary works, from tide-water to the mouth of Dunlap's creek, in the manner directed by the said act, and according to its true intent and meaning; and all the powers and rights heretofore vested by law in the James river company for the purposes aforesaid, and within the limits aforesaid, are hereby vested in such commissioner; and it shall, moreover, be the duty of the said commissioner to keep the bed of the river in a good and convenient state for navigation, between Crow's ferry and the point to which any new improvement shall be completed for use, and connected with the river.

10. Before the said commissioner shall proceed to the execution of his office, he shall enter into bond with one or more good and sufficient securities, in the penal sum of forty thousand dollars payable to the James River company, conditioned that he will, faithfully and honestly and to the best of his abilities, perform the duties of his said office, according to the laws now in force, and such as may be passed by the General Assembly, from time to time; and he shall, moreover, take an oath or make affirmation, that he will faithfully and honestly, and to the best of his abilities, perform the duties required of him by law; that he will not directly or indirectly be concerned or interested

in any contract, which may be made with him or any person on his behalf, for any labor, material or other thing necessary for the prosecution of the said works; and every contract, made in violation of such oath, shall be utterly void. If said commissioner shall either directly or indirectly be concerned or interested in any contract, in violation of this act, it shall be deemed and taken to be a breach of the condition of the bond herein required to be executed by him, and judgment shall be entered against such commissioner and his securities, for a sum, not less than the amount of said contract, nor more than twice the amount of said contract, at the discretion of the jury.

11. *Be it further enacted*, That there be appointed, in manner before-mentioned, another officer, to be denominated the commissioner of the Kanawha road and navigation; whose duty it shall be to carry into effect such of the provisions of the act herein-before-mentioned, as direct the constructing and completing a road from the mouth of Dunlap's creek, to the great falls of the great Kanawha river, and that the latter river shall be rendered navigable from thence to the river Ohio, according to the true intent and meaning of said act; and all the powers and rights heretofore vested by law in the James river company, for the purposes aforesaid, and within the limits aforesaid, are hereby vested in the said commissioner.

12. Before the last mentioned commissioner shall be authorised to execute the duties of his office, he shall enter into like bond, and take like oath or affirmation, with that directed above, in relation to the commissioner of the James and Jackson's river canal; and the said commissioner of the Kanawha road and navigation, with his securities, and the contracts made by him, shall be subject to the like rules and regulations, liabilities and recoveries, as are prescribed above in relation to the commissioner of the James and Jackson's river canal, his securities and contracts. The bonds executed by the commissioners aforesaid, and the certificate of their oath of office, which may be administered by any justice of the peace, shall be filed with the second auditor, before they shall, respectively, be authorised to enter upon the duties of their office.

13. *Be it further enacted*, That the said commissioners shall 54
give their constant attendance in directing and superintending the respective improvements necessary for the promotion and final accomplishment of the objects contemplated by the act herein-before-mentioned, and respectively confided to them. Each commissioner shall appoint such engineers, managers or agents, as he may think necessary, who shall be under his control, and removable at his pleasure: *Provided*, That the engineer appointed by the Board of Public Works, shall, whenever, upon the application of said commissioners, he shall be directed by the ex-officio members of said board, attend the commissioners of the James and Jackson's river canal, and of the Kanawha road and navigation, when previous engagements of the engineer on subjects of greater importance, do not interfere. The said com-

missioners shall, each respectively, on behalf and in the name of the James river company, make such contracts for labor, materials, and other thing necessary in the prosecution of the work in their several precincts, as each of them may deem expedient. And a copy of every contract shall be immediately transmitted by the commissioner making the same, to the second auditor, to be carefully filed and preserved; and all reports of engineers, or estimates of work, shall in like manner be transmitted by the commissioners, and filed and preserved.

14. All monies which may become due to any person or persons, by virtue of any contract, made with either of the said commissioners, by virtue of this act, shall be paid by the treasurer out of the fund provided for the improvement of James river, on a warrant from the second auditor, which shall be issued on the order of the commissioner who authorised the contract; in which order, the consideration on which it is founded, shall be expressly stated: *Provided, however,* That no warrant shall be drawn by the second auditor, on any such order of the commissioner, unless the contract on which it is founded shall be filed with the said auditor, and shall appear to justify it. And, in order to prevent, as far as possible, any failure in the payment of any such sum of money, the said commissioners, respectively, shall, from time to time, ascertain the state of the disposable funds in the hands of the treasurer, and regulate themselves accordingly in making contracts.

15. Every contract made by the James river company, with any person or persons, relating to, or connected with, the purposes of the act herein-before-mentioned, shall be as valid as if the powers of the said company had continued. And the said commissioners, respectively, shall carry the same into effect as the said company could, or ought to have done; and all claims for money which have heretofore accrued, for services, labour, materials, or other 55
thing, shall be settled and audited by the second auditor, and he shall grant warrants for such sums as may appear to be justly due. As to all monies falling due on or before the first day of May next, upon contracts now existing, made by the James river company, or under their authority, they shall be adjusted and settled under the authority of the president and directors of said company, now in office; and warrants shall be granted by the second auditor for the amount due, upon the certificate of said president and directors: *Provided,* Such settlement be made *or* or before the first day of May. But, if such settlement be not made on or before that time, then the claims shall be settled and adjusted, by the respective commissioners aforesaid, and the warrants granted upon their certificates. All superintendents, agents, and other officers appointed by the James river company, shall continue in office, pursuant to their appointments, till they shall be superseded, by appointments under this act, or their offices annulled by the provisions thereof.

16. The said commissioners shall, each, respectively, before the fifteenth day of every session, make full and detailed reports of their transactions, to the General Assembly, stating at length the expenses incurred by their contracts, or otherwise, and the progress of the work, and any other material matter that they may deem proper.

And whereas, it is represented, that it may be necessary to erect bridges over the Greenbrier river, and also over New river or Gauley river:

17. *Be it therefore enacted*, That the commissioners of the Kanawha road and navigation, shall have power to erect such bridges, if the same shall be found to be practicable at a reasonable expense; and, when completed, that he cause to be collected such tolls as may be reasonable, to be revised or altered by the legislature, as they may think necessary. And it shall be the duty of the said commissioner to transmit a list of the tolls to the General Assembly, at its next succeeding session; and likewise cause a list of said tolls to be recorded in the county where the bridge or bridges may be situate.

18. *And be it further enacted*, That the said last mentioned commissioner shall be, and he is hereby invested with full power and authority to collect the tolls directed to be collected by the act aforesaid, on the river Kanawha, and the road between the mouth of Dunlap's creek and the great falls of the Great Kanawha river; and, to this end, all the rights and powers vested by the law in the James river company, are hereby vested in the said commissioner; and payment for tolls to be imposed for passing the bridges, may be enforced in the same manner, and under the same regulations, as tolls on turnpike roads are collected and enforced.

19. Before the said commissioner shall have power to proceed to the collection of any of the said tolls, he shall execute a separate bond, with good and sufficient security, in the penalty of forty thousand dollars, payable to the James river company; conditioned, that he will make due returns of all tolls; well and truly account for all monies which may come into his hands by virtue of this act, and regularly pay the same into the treasury, at the end of ev- 56
ery six months, commencing from the date of the bond; and if he shall fail to make such returns regularly at the end of every six months, or within twenty days thereafter, it shall and may be lawful for the general court, on the motion of the second auditor, on behalf of the James river company, to enter up judgment against the said commissioner, and his securities, for a sum not exceeding five hundred dollars, and costs; and such motion and judgment may be repeated until a compliance with the provisions of this act shall be enforced: *Provided, nevertheless*, That the general court, at their succeeding term, shall have power to open such judgment, if it shall appear to them that the failure complained of was owing to circumstances which justified or extenuated it, and that the commissioner had not a fair opportunity to make them known, at the term when

the judgment was rendered against him; and the court may thereupon give such judgment as to the penalty, as the very right of the case may require.

20. *Be it further enacted*, That if from any semi-annual return herein-before directed, it shall appear that there is any sum of money in the hands of such commissioner, and he shall fail to pay the same within twenty days after the period, up to which such return has relation, it shall be lawful for the general court, on the motion of the second auditor, on behalf of the James river company, to render judgment for the amount so appearing to be due, with interest at the rate of ten per centum per annum, from the time such return closed, and costs: *Provided nevertheless*, that nothing in this act contained shall be so construed, as to prevent the said commissioner, from discharging any proper claim which ought to be paid according to the provisions of this act, out of any monies in his hands; but that, on furnishing proper vouchers, he shall be entitled to a credit for the sums so disbursed.

21. *Be it further enacted*, That so much of the act herein-before mentioned, or any other act, as provides for the appointment of ten commissioners, denominated, "the commissioners for the Kanawha river and road," and for the appointment of nine other commissioners, denominated, "the commissioners for the James and Jackson's rivers," be, and the same is hereby repealed: and all the power and authority of the said commissioners shall henceforth cease and determine.

22. *Be it further enacted*, That, whenever it shall become necessary to subject the lands of individuals to the purposes provided for in the said act, and the consent of the proprietor cannot be obtained, it shall and may be lawful for the said commissioners, within their respective precincts, to enter upon such lands, and proceed to the execution of such works as may be requisite; and that the pendency of any proceedings, in any suit of the nature of a writ of ad quod damnum, or any other proceedings, shall not hinder or delay the progress of the work; and no order shall be made, or injunction awarded, by any court, by which the progress of the work shall be arrested; it being the true intent and meaning of this act, that all lands shall be liable to condemnation, and that the proprietor shall be compensated, in damages. And it shall be the duty of every court to give precedence to controversies which are now pending, or which hereafter may arise, relative to the condemnation of land for any public purpose whatever, and to determine them in preference to all other causes; and no abatement or dismission of any 57
cause now depending, shall take place, by reason of any thing contained in this act.

23. *Be it further enacted*, That it shall and may be lawful for the commissioner of the James and Jackson's river canal, to subject to condemnation any land which may be necessary for the purpose of

erecting dams for feeders, or any land through which feeders may be conducted, and for the purpose of establishing reservoirs, in the same manner as lands are authorised to be subjected by law for the canal.

24. *And be it further enacted*, That, in any future assessment of damages, on behalf of any proprietor of land through which the canal or feeder may be conducted, no compensation for any fencing to separate the land condemned for the use of the James river company from his other lands, shall be allowed; nor shall any compensation be made to any such proprietor for any bridge or bridges over such canal or feeder, but such bridges, and such additional fencing, as shall have become necessary, by reason of such canal or feeder, shall be constructed by the commissioner of the James and Jackson's river canal, wherever he may deem them necessary; the expense of which shall be paid out of the fund provided to make the improvement on James river. If any proprietor of the lands through which the canal or any feeder may be conducted, shall believe a greater number of bridges, or bridges of a different kind, or other fencing, required for the use of his lands, than the said commissioner may deem necessary, or that they should be constructed at a different place or places from those fixed upon by the said commissioner, such proprietor, upon application to the clerk of the superior court of law for the county in which said lands lie, may obtain from said clerk a writ in nature of a writ of ad quod damnum, directed to the sheriff of said county, requiring him to summon a jury of twenty-four inhabitants of his county, being freeholders, not related to said proprietor, or commissioner, nor in any way interested, to meet on the lands through which the canal or feeder may be conducted, on a day to be expressed in the writ, not less than twenty, nor more than thirty days thereafter; and the sheriff, on receiving said writ, shall forthwith summon the jury; and, when met, shall administer to every juryman who shall appear, not being fewer than twelve in number, an oath or affirmation, that he will faithfully, justly, and impartially, determine the matters submitted to him, according to the true meaning and intent of this act, to the best of his skill and judgment; and, thereupon, the said jury shall proceed to determine how many bridges, of what description, and what fencing, may be reasonably necessary to the aforesaid proprietor, for the use of said lands, and at what places on said canal, or feeder, they should be constructed, and report, in writing, their finding on these subjects; which report shall be signed by the sheriff, and some twelve or more of the jury, and returned by the sheriff, within ten days after the execution of said writ, to the clerk of said superior court: *Provided, however*, That ten days previous notice be given to said commissioner of the time and place of executing said writ; and, at the next term after the return of said report, the said court, from the finding of the jury, as well as from other evidence, shall decide whether the number of bridges,

their description, and the fencing, fixed by the jury, or any greater or less number, or any other kind, or any other fencing, be necessary to the proprietor, for the use of his lands; and whether the place or places fixed upon by the jury for the construction of such bridge, or bridges, or fencing, be proper; and may make such other order, touching the subject, as shall seem just and right; and the said commissioner shall cause a bridge, or bridges, and fencing, to be constructed, according to the judgment of the court; the expense of which shall be paid out of the funds provided for the improvement on James river. All bridges and fencing, to be constructed according to the provisions of this act, shall, at all times, be kept in good repair by the commissioner of the James and Jackson's river canal; and the expense thereof paid out of the tolls collected on James river. 58

25. *And be it further enacted*, That the second auditor shall receive annually the sum of fifteen hundred dollars, and the clerk he may employ, the sum of seven hundred dollars, to be paid quarterly; one third out of the revenues of the Literary Fund; one third out of the revenues of the fund for internal improvement; and one third out of the fund provided to make the improvements contemplated by this act.

26. The commissioner of the James and Jackson's river canal, shall receive two thousand five hundred dollars per annum; and the commissioner of the Kanawha road and navigation, fifteen hundred dollars per annum; to be paid quarterly out of the fund provided to effect the works which they are respectively to superintend; and the persons employed by them under the authority of this act, shall be paid such compensation for their services as the said commissioners, respectively, may certify them to be worth, according to the contract made with them, to be paid as other claims arising under this act are directed to be paid.

27. *Be it further enacted*, That, in case of the death, resignation or inability to act, of the second auditor, or of either of the commissioners appointed under this act, the executive shall have power to fill such vacancy; and the person or persons so appointed, shall continue in office till the end of the next session of the legislature.

28. *Be it further enacted*, That the second auditor shall, after his election, and before entering upon the discharge of the duties prescribed by this act, enter into bond with sufficient security, to be judged of by the executive of this commonwealth, payable to the governor thereof, in the penalty of twenty thousand dollars, conditioned for the faithful discharge of all the duties created by this act.

29. This act shall be in force from the passing thereof.

CHAPTER 9.—An act authorising a loan for the purposes of internal improvement.

12

[Passed March 8th, 1824.]

1. *Be it enacted by the General Assembly*, That the president and directors of the James River company be, and they are hereby empowered, as soon as may be necessary for the purposes herein declared, to borrow, on the credit of this State, a sum of money not exceeding four hundred thousand dollars, and at a rate of interest not exceeding six per cent. per annum. The monies so to be borrowed shall be paid into the treasury upon the warrant of the second auditor; and, upon the receipt in the treasury of the sums so borrowed, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the sum loaned, together with the interest, at the rate of interest agreed on; and that the interest is payable semi-annually at the treasury of the Commonwealth. Such certificate shall shew, on the face thereof, that the loan was made under the authority of this act. It shall be signed by the treasurer and countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferable on the books of the second auditor, and the semi-annual interest thereon shall be paid on his warrant. The principal sum authorised to be borrowed by this act is hereby declared to be irredeemable for twenty years; but shall be afterwards redeemed, at the pleasure of the General Assembly, within a period not exceeding fifteen years.

2. *And be it further enacted*, That, for the payment of the interest and the final redemption of the principal of the sums to be borrowed under authority of this act, there shall be, and hereby are appropriated and pledged the sum of eighteen thousand dollars, out of the income of the fund for internal improvement, the surplus tolls and rents of water-rights belonging to the James River company, and the nett proceeds arising from the canal and the tolls on the Kanawha road and river, when completed; also, the surplus fund belonging to the said company arising from the unexpended balances 13
of the appropriation of eighteen thousand dollars of the revenue of the fund for internal improvement. And if the foreging appropriations should be inadequate to the payment of the interest authorised to be borrowed by this act, and for the final redemption of the principal, the General Assembly pledges itself to provide other and sufficient funds for that purpose. Until such other sufficient funds shall be provided by law, so much of the revenue of the fund for internal improvement, as may be necessary to supply the deficiency, is hereby pledged for that purpose.

3. *Be it further enacted*, That the monies directed to be borrowed by this act, shall be appropriated towards completing the works commenced on the Kanawha road and river, in the manner prescribed by law, and to completing the James and Jackson's River canal and the works thereon to Maiden's Adventure falls, and to the making and constructing of a canal, along the margin of James River, from the lower end of Irish falls in the county of Amherst, to the mouth of the North river in the county of Rockbridge; and, so soon as the commissioner of the Kanawha road and navigation can, consistently with his present duties, he shall proceed to construct the canal from the lower end of Irish falls along the margin of James River, through the Blue Ridge, to the mouth of the North river, in all respects as is now required by law, except, that the said canal shall not be more than thirty feet wide at the top, nor more than twenty feet wide at the bottom.

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CHAPTER 46.—An act making further provision to carry into effect the act, entitled "an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

38

[Passed February 16th, 1825.]

1. *Be it enacted by the General Assembly*, That the president and directors of the James River Company be, and they are hereby empowered, as soon as may be necessary for the purposes herein declared, to borrow, on the credit of the State, a sum of money not exceeding two hundred thousand dollars, and at a rate of interest not exceeding six per centum per annum. The monies so to be borrowed, shall be paid into the treasury upon the warrant of the second Auditor; and upon the receipt in the treasury of the sums so borrowed, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators, or assigns, the sum loaned, together with the interest, at the rate of interest agreed on; and, that the interest is payable semi-annually, at the treasury of the Commonwealth. Such certificate shall shew, on the face thereof, that the loan was made under the authority of this act. I shall be signed by the treasurer, and counter-signed by the second Auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferrable on the books of the second Auditor; and the semi-annual interest thereon shall be paid on his warrant. The principal sum authorised to be borrowed by this act, is hereby declared to be irredeem-

able for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly.

2. *Be it further enacted*, That, for the payment of the interest and final redemption of the principal of the sums to be borrowed under authority of this act, the same pledges and appropriations are hereby made and given, as are contained in the second section of the act entitled, "an act authorising a loan for the purpoess of internal improvement," passed the eighth day of March, eighteen hundred and twenty-four.

3. *Be it further enacted*, That the money directed to be borrowed by this act, and the unexpended balance of the loan authorised by the act of the eighth of March last, shall be appropriated towards completing the works commenced on the Kanawha river and road, and to the extending the same road in the manner prescribed by law, and to completing the James and Jackson's river canal, and the works thereon to Maiden's Adventure Falls, and to the completing the canal now constructing along the margin of James river, from the lower end of Irish falls in the county of Bedford, to the mouth of the North river, in the county of Rockbridge. 39

4. *Be it further enacted*, That, if the commissioner of the Kanawha road and navigation, can, without loss to this Commonwealth, and without paying any compensation to the contractor, beyond the value of the work which he may have executed, procure an abandonment of the contract now existing, for the improvement of so much of the Kanawha river as lies between the town of Charlestown and the Great Falls of the same river, he shall then have full power and authority, and he is hereby required to extend the turnpike road, now constructing under his superintendence, from the said Great Falls, to the lower end of the salt works in the county of Kanawha, and shall pretermit any further improvement in the navigation of the river, above the town of Charlestown.

5. *Be it further enacted*, That the said road shall be laid out and located by the said commissioner, upon the best ground, to be selected by him, between the two points in this act mentioned the road aforesaid, to be completed according to the provisions of the "act to amend the act entitled, 'an act for clearing and improving the navigation of James river, and for uniting the eastern and western waters by the James and Kanawha rivers;" reducing, however, the width of the summer road to eleven feet, and in difficult places, dispensing entirely with such summer roads: *Provided*, That the county court of Kanawha shall finish the bridge contemplated, across Campbell's creek in said county, and shall keep the same in good repair at the county charge.

6. *Be it further enacted*, That so soon as the said road shall be completed, it shall and may be lawful for the president and directors of the James River Company, and they are hereby required, to erect a toll-gate, at such places on said rivers as to them may seem proper,

with such reasonable tolls as will pay to the said company, at least six per centum per annum, upon the sum of money which may be expended in constructing said road.

7. *Be it further enacted*, That to enable the James River Company to open and complete the aforesaid road, and to keep the same constantly in good repair, which they are hereby required to do, they shall be entitled to avail themselves of all the provisions which have been made by law for the opening and constructing the great road from Dunlap's creek to the falls of the Great Kanawha, as well for the condemnation of lands as for other purposes.

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CHAPTER 25.—An act authorising a loan for the purposes of Internal Improvement.

[Passed March 1st, 1826.] 26

1. *Be it enacted by the General Assembly*, That the president and directors of the James river company be, and they are hereby empowered, as soon as may be necessary, for the purposes herein declared, to borrow on credit of the State, a sum of money not 27 exceeding two hundred thousand dollars, and at a rate of interest not exceeding six per centum per annum. The sum so to be borrowed, shall be paid into the treasury, upon the warrant of the second auditor; and upon the receipt into the treasury of the sum so borrowed, the treasurer shall issue his certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the sum loaned, together with the interest, at the rate of interest agreed on, and that the interest is payable semi-annually at the treasury of the Commonwealth. Such certificate shall shew on the face thereof, that the loan was made under the authority of this act. It shall be signed by the treasurer, and countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferable on the books of the second auditor, and the semi-annual interest thereon, shall be paid on his warrant. The principal sum authorised to be borrowed by this act, is hereby declared to be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly.

2. *Be it further enacted*, That for the payment of the interest, and the final redemption of the principal of the sums to be borrowed under the authority of this act, the surplus tolls, rents and water rights on the mountain section of the James river canal, and the works on the Kanawha river and road, are hereby pledged, and if these appropriations should be inadequate to the payment of interest, and the final

redemption of the principal of the sum now proposed to be borrowed, and that already expended on the said works, the General Assembly pledges itself to find other and sufficient funds, and until such other and sufficient funds be furnished, the revenues of the fund for internal improvement, are hereby pledged and appropriated. (*a*)

3. *And be it further enacted*, That the president and directors of the Literary Fund, shall invest the uninvested capital belonging to that fund, in the stock authorised by this act. And that each certificate of stock issued in pursuance of this act, shall have on its face a direct reference to the act which authorised it.

4. *Be it enacted*, That the commissioner of the Kanawha road and navigation, shall forthwith settle all the contracts for work on the mountain section of the James river canal, as far as the contractors have completed any jobs heretofore. He shall not contract for a farther extension of the Kanawha road, but is authorised to complete the improvements on the Kanawha river, up to the present termination of the turnpike road. The commissioner or commissioners, whose duty or duties it may be to carry into effect the third (*b*) section of this act, shall not do any act or make any contract which may subject the State to the payment of a sum of money exceeding in amount, the sum herein directed to be borrowed.

* * * * *

CHAPTER 26.—An act to amend an act, entitled, "an act authorising a loan for the purposes of Internal improvement."

[Passed March 8th, 1826.] 29

Whereas a mistake has occurred in an act, entitled, "an act authorising a loan for the purposes of internal improvement," passed the first day of March, eighteen hundred and twenty-six:

1. *Be it therefore enacted*, That the money directed to be borrowed by the said act, and the unexpended balance of the loan authorised to be borrowed by the act of the sixteenth of February, eighteen hundred and twenty-five, shall be appropriated toward completing the works commenced on the Kanawha river and road, and to extending the same in the manner prescribed by law; and to completing the James and Jackson's river canal, and the works thereon, to Maiden's Adventure falls; and to completing the canal now constructing along the margin of James river, from the lower end of Irish falls, in the county of Bedford, to the mouth of North river, in the county of Rockbridge.

2. *Be it further enacted*, That the reference in said act to the third section, shall be taken as referring to this act.

3. This act shall be in force from the passage thereof.

CHAPTER 47.—An act providing for re-building Gauley bridge, the payment of existing contracts, and for other purposes.

(Passed March 7th, 1827.)

1. *Be it enacted by the General Assembly*, That the president and directors of the James River Company, are hereby authorised and directed to dispose of so much of the James River surplus and appropriation fund belonging to the fund for Internal Improvement, as will produce the sum of forty thousand dollars; which said sum is hereby appropriated for the purposes hereinafter mentioned.

2. *Be it further enacted*, That so much of the said sum as shall be necessary, shall be and is hereby appropriated to re-building the bridge across Gauley river, to be expended for that purpose under the direction and superintendence of the commissioner of the Kanawha road and navigation, who shall cause the said bridge to be built upon such model, as in his opinion will combine economy with public utility.

3. *Be it further enacted*, That the sum of twenty-eight thousand dollars of the aforesaid sum, shall be and is hereby appropriated for the purpose of enabling the James River Company, and the commissioner of the Kanawha road and navigation, to complete the works already contracted for and remaining unfinished, and to pay what may be now due on existing contracts.

4. *Be it further enacted*, That hereafter the following tolls shall be demanded and received on the tow-path of the mountain section of the James River canal, to wit: for every person on foot, six and a quarter cents; for every person on horse-back, six and a quarter cents; for every horse, mare, mule or work ox, two cents; for every head of neat cattle, two cents; for every score of sheep, hogs or goats, twelve and a half cents; and so in proportion for any greater or less number: And it shall henceforth be the duty of the 38
receiver of the tolls of the mountain section of the James River canal, and the bridge and tow-path thereof, to make quarter yearly payments of tolls received by him, to the commissioner of the Kanawha road and navigation, who shall in like manner make quarter yearly settlements of the said tolls with the president and directors of the James River Company: And it shall be lawful for the said commissioner to change the location of the toll-gates on the Kanawha road, and to make contracts for keeping the said road in repair by sections for any period not exceeding three years, taking bond and security of the contractor or contractors in a reasonable penalty, and conditioned for the faithful performance of such contract or contracts: And he is also hereby authorised and empowered to erect such buoys and ring bolts on the Kanawha river, as may in his opinion be expedient for the safe and convenient navigation thereof, and if necessary, to cause a house to be erected in, or near the said river

for the collection of tolls and registering and numbering all boats navigating the said river, and to make all such other arrangements as may be necessary for collecting the tolls on the said river.

5. *Be it further enacted*, That the commissioner of the Kanawha road and navigation, shall hereafter receive an annual salary of eight hundred dollars, in lieu of the salary now allowed him by law.

6. This act shall be in force from the passing thereof.

CHAPTER 71.—An act providing for the extension of the Kanawha turnpike road to Big Sandy river.

(Passed January 30th, 1829.)

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised and required to cause the present Kanawha turnpike road to be extended from the western termination thereof, to the mouth of Big Sandy river, and for defraying the expense that may be incurred under this act, the said President and Directors are hereby authorised and empowered to borrow on the credit of the Commonwealth, at such time or times as they may deem proper, any sum or sums of money not exceeding fifty thousand dollars, provided the same can be obtained at a rate of interest not exceeding six per centum per annum, payable half yearly, and to issue to the loaners of the said money, certificates in the same form, transferable in the same manner, and redeemable at the same periods, with those which have been heretofore authorised and employed in the negotiations of the last loans obtained by the State for the purposes of internal improvement: and that the tolls hereafter raised upon the Kanawha turnpike road heretofore finished, as well as the tolls which may arise from the road hereby authorised to be made, after keeping the said road in repair, shall be, and the same are hereby pledged for the payment of the interest which may accrue on the money to be borrowed under the authority of this act, and for the final redemption of the stock which may be created under the provisions herein contained; and if the tolls shall be found inadequate to the payment of the said semi-annual interest, then, such deficiency shall be paid out of any monies belonging to the fund of internal improvement.

2. *Be it further enacted*, That the Principal Engineer as soon as may be after the passage of this act, shall proceed to lay out and locate the said road from the western termination of the said Kanawha turnpike road, to the mouth of Big Sandy river, of the same width of location, and of construction with the best parts of the road heretofore made: In the performance of which duty, he is hereby required to graduate the same as near a horizontal line as the inequalities of the

ground may admit of, but so that the said road when formed shall in no instance diverge more than five degrees from a horizontal line: That in making such location he shall so mark his stations, and levels, and indicate the sites of the bridges and culverts which he may deem necessary, that the superintendents of the work with the aid of his field notes, may be readily enabled to execute the same, according to the designs and plans of the said Principal Engineer.

3. *Be it further enacted*, That the Principal Engineer shall, in locating the said road, and in his report thereof, carefully estimate and describe the quantity and kind of labour to be done on each mile thereof, and the reasonable cost of the same. He shall also describe the number, kind and situation of the bridges, culverts and drains which he may deem necessary, accompanying his descriptions with profiles or drawings when he may deem the same useful; so that such report may form the basis of contracts for the execution of the entire work. And it shall be the further duty of the said Engineer, to deliver to the clerks of the county courts of Kanawha and Cabell counties, plats or maps of so much of the said road as may be within their respective counties, to be by them respectively recorded, and thereupon the land over which the said road shall be located shall become, ipso facto, vested in the Commonwealth for the use of the said road.

4. *Be it further enacted*, That if any person shall conceive himself, herself, or themselves, aggrieved by the location of the said road, and the investment of the land in the Commonwealth, over which the same shall pass, or by the erection of any bridges, abutments or other necessary work or building, in the formation and construction of the said road, it shall be lawful for such person or persons, within one year from the recording of the maps or plats as herein provided for, to file a suggestion before the superior or county court of the county where such land may be situated, setting out the grounds of the injury complained of, and for which damages are claimed, of which suggestion the person complaining shall give to the President of the James River Company at least thirty days notice, by serving him with a copy thereof; whereupon, the court before whom the suggestion may be filed, shall cause an issue to be made up and tried at the bar of the said court, as other issues of fact are tried, for ascertaining what damages the complainant hath sustained by reason of the matters alleged in his suggestion, over and above the advantages and benefits accruing to the complainant, by the opening and constructing the said road. And upon the certificate of the court trying such issue, the President and Directors of the James River Company shall pay the amount of the damages which may be so found, to the party appearing by said verdict to be entitled to the same, out of any unexpended funds in their hands; but all persons failing to file suggestions as herein provided, for the space of one year from the time at which such maps or plats

shall be delivered for recording, shall be held and deemed to have relinquished to the Commonwealth all claim to damages arising or supposed to arise from the execution of this act.

5. *Be it further enacted*, That the President and Directors of the James River Company, by themselves, their agents and servants, and the Principal Engineer, with the surveyors and assistants, shall have full power and authority to enter upon all lands and tenements, through which they may think it necessary to make examinations, and to lay out the said road as the Principal Engineer may judge most for the public advantage and benefit. And in the opening and constructing the said road, the President and Directors of the James River Company, their agents and servants, shall have the same power and authority, and be subject to the same limitations and restrictions as are provided in the twelfth and thirteenth sections of the "act prescribing certain general regulations for the incorporation of turnpike companies," passed February the seventeenth, in the year eighteen hundred and seventeen.

6. *Be it further enacted*, That the President and Directors of the James River Company be, and they are hereby authorised to select and appoint an able, capable, discreet superintendent of the road hereby directed to be made, and to allow him such salary as they may judge reasonable, not exceeding seven hundred and fifty dollars per annum. It shall be the duty of the said superintendent to make all contracts for the opening and constructing the said road, erecting bridges, and whatever else may be necessary for the fully finishing and completing the same, under the direction of the said President and Directors, and subject to their approbation and ratification. It shall also be his duty strictly and constantly to superintend the execution of all the works upon the said road, and perform such other duties as the President and Directors of the James River Company may from time to time appoint and direct; and the said President and Directors shall have full power and authority to re- 48
move from office, for any cause by them deemed sufficient, any superintendent by them appointed, and to appoint another in his place.

7. *Be it further enacted*, That as soon as a section of fifteen miles of the said road shall be completed, and as often as sections of that length shall be finished, it shall be lawful for the President and Directors of the James River Company to cause a gate or gates to be erected across the said road; to appoint receivers of tolls at said gates, and to exact and receive for the use of the said road, the same rates of toll as are now paid for the use of an equal distance of the Kanawha turnpike. And all the laws and regulations heretofore enacted in relation to the Kanawha turnpike, shall be held and taken as equally applying to the extension hereby directed to be made, so far as the same remains unchanged by the provisions of this act.

8. *Be it further enacted*, That it shall be the duty of the owners and proprietors of the ferries over water-courses on the line which may

be selected for the road, to graduate the banks to the angle hereby prescribed, and by permanent and sufficient wharfing to secure the same from abrasions, of such width, and in such manner and time, as the Principal Engineer shall prescribe, and at all times shall keep the same so covered with stone or gravel when necessary, as to render the approach to the ferry boat firm and dry; and every keeper or owner of a ferry over which the said road may pass, who shall fail to comply with any of the requisitions of this act, shall be subject to a fine of not less than twenty dollars, nor more than one hundred dollars, to be recovered by indictment or information in any court having jurisdiction thereof, for the use of the President and Directors of the James River Company; but nothing in this section contained, shall be so construed as to prevent the President and Directors of the James River Company from erecting bridges at any time hereafter over such water courses, reserving to the owners or proprietors of such ferries, all the rights and remedies given to the owners and proprietors of the land over which the road may be made.

9. This act shall commence and be in force from and after the passing thereof.

CHAPTER 72.—An act concerning the Kanawha Road and Bridges, and for other purposes.

(Passed February 28th, 1829.)

4. *Be it further enacted*, That for the purpose of discharging the unsatisfied demands against the company, for the construction of the public improvements under their direction, it shall be lawful for the President and Directors of the James River Com- 49
pany, and they are hereby authorised and required, to borrow a sum not exceeding ten thousand dollars, on the same terms and conditions, and on the same pledges, as are specified for the loan authorised by the act passed on the first day of March, one thousand eight hundred and twenty-six, entitled, "an act authorising a loan for the purposes of internal improvements," which sum, or any part thereof which may be borrowed, is hereby appropriated to the discharge of the demands aforesaid.

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CHAPTER 73.—An act prescribing a tariff of tolls on the Kanawha river, and for other purposes.

(Passed February 27th 1829.)

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9. *Be it further enacted*, That it shall be the duty of the President and Directors of the James River Company to cause buoys to be placed in the Great Kanawha river, so as readily and clearly to indicate and point out to navigators all the entrances and lines of the sluices, the wing-dams and the jetties, and generally the course of the channels. The said President and Directors shall also cause beacons to be placed on the bars, rocks and other obstructions to the navigation, not within the sluices or channels, but which, from their positions, or from other causes, are likely to endanger the safety of vessels or boats navigating the said river; which buoys and beacons shall be so constructed as to be visible, until the water of the river shall rise five feet above its ordinary lowest level. For the greater safety and convenience of the ascending trade of the said river, it shall be the further duty of the said President and Directors to cause large rings to be attached by suitable bolts to rocks or other stable bodies, along the sluices and at the ends of the wing-dams and jetties, for the better enabling the ascending boats to overcome the force of the currents, by warps and cords.

10. *Be it further enacted*, That it shall be the duty of the said President and Directors, to cause all depositions of sand, gravel, timber or other obstructions in the channels, sluices or passages of the said river, to be removed therefrom, so as to restore to the said channels, sluices and passages, the width and depth of water produced therein by the works recently constructed on the said river, and at all times to keep the said channels, sluices and passages, free from depositions or other obstructions which may impair or impede the navigation: *Provided*, That nothing in this act contained shall authorise the expenditure of a sum exceeding one thousand dollars.

11. *Be it further enacted*, That it shall be the duty of the Principal Engineer of this Commonwealth, and he is hereby required to attend during some dry season, to view the several improvements made on the said river and make report on their defects and the remedies necessary therefor, to the Board of Public Works at its next session.

12. This act shall be in force from and after the passing thereof.

CHAPTER 53.—An act making further provision for the extension of the Kanawha turnpike to Big Sandy river.

(Passed December 18th, 1829.) 45

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised and empowered to borrow on the credit of the Commonwealth, at such time or times as they may deem proper, any sum or sums of money, not exceeding eight thousand dollars, on the same terms, conditions and pledges, as are specified for the loan authorised by the act of the thirtieth of January, eighteen hundred and twenty nine, providing for the extension of the Kanawha turnpike to the mouth of Big Sandy river, and to be applied to the same purposes.

2. This act shall commence and be in force from and after the passage thereof.

CHAPTER 52.—An act authorising a change in the location of the Kanawha turnpike road.

(Passed January 30th, 1830.) 44

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised to vacate and annul the location made of the Kanawha turnpike road, by the Principal Engineer, between the land of John Shrewsbury, senior, and Campbell's creek, in the county of Kanawha, and to cause the same to be re-located along and near to the shore of the Great Kanawha river: *Provided*, they can procure a substitution of the one line for the other with the contractors for forming that part of the road, without increasing the expense of the execution thereof, or that the proprietors of the land shall defray the difference of the cost in the two lines; and if additional bridges or culverts should be rendered necessary by such re-location, the walls of the embankments, abutments and piers, shall be constructed of stone, under the direction of the Superintendent of said road, whose duty it shall be to have the same constructed of good materials, and in a workman-like manner: *And provided also*, That the pro- 45
prietors of the land over which the road shall pass near the river, shall release all damages or claims to remuneration for the land over which the said road may be conducted.

2. *Be it further enacted*, That on such re-location being made, the said President and Directors shall cause to be recorded in the office of the clerk of the county court of Kanawha, a map or drawing of the re-located section of road, which shall have the same legal effects,

and operate upon the land over which the road shall pass, in the same manner, and to the same extent, as if such location had been there made in the first instance, and the surveys and drawings thereof had been reported and recorded by the Principal Engineer.

3. This act shall commence and be in force from and after the passing thereof.

CHAP. CVI.—AN ACT making further provision for the extension of the Kanawha turnpike to Big Sandy river.

[Passed March 31, 1831.] 158

1. *Be it enacted by the general assembly*, That the president and directors of the James river company be, and they are hereby authorized and empowered to borrow, on the credit of the commonwealth, at such time or times as they may deem proper, any sum or sums of money, not exceeding fifteen thousand dollars, on the same terms, conditions and pledges, as are specified for the loan authorized by the act of the thirtieth of January, eighteen hundred and twenty-nine, providing for the extension of the Kanawha turnpike to the mouth of Big Sandy river, and to be applied to the same purposes.

2. This act shall commence and be in force from and after the passage thereof.

CHAP. LXXXII.—An act incorporating the stockholders of the James river and Kanawha company.

(Passed March 16th, 1832.) 73

Whereas the measures hitherto adopted by the general assembly for the purpose of connecting the tide water of James river with the navigable waters of the Ohio, have been found inadequate to effect that object, by such line of transportation as the public interest requires; and it is now deemed expedient for that purpose to incorporate a joint stock company, to which the interest of the commonwealth in the James river company shall be transferred at a fair value: Therefore,

1. *Be it enacted by the general assembly*, That the president and directors of the James river company shall, without delay, cause books of subscription to be opened in the city of Richmond, in the towns of Lynchburg, Lexington, Pattonsburg, Covington, Staunton, Fincastle, Lewisburg, Union, Charlestown upon the Kanawha, and such other places as they may deem expedient and under the superintendence of such commissioners as they may think proper to appoint, for the purpose of raising a capital stock of five millions of dollars, in shares of one hundred dollars each. At least thirty

days previous notice in some newspaper published most convenient to each place of subscription, and in such other newspapers as may be deemed proper, shall be given of the time and places of opening the books. The books shall be kept open for twenty days; and if within that time three-fifths of the capital stock shall not have been subscribed by persons, bodies politic or corporate, other than the commonwealth, they shall be again opened and may be continued open, if necessary, until the second Monday in December next. All subscriptions must be for one or more whole shares; none being allowed for any part of a share.

2. When the books are opened the state shall be regarded as a subscriber for ten thousand shares of the stock; to be paid for by a transfer of her whole interest in the works and property of the present James river company, and when they are finally closed they shall be returned to the second auditor, verified by the signatures of the commissioners, or some of them, and be laid before the president and directors of the James river company, in order that the amount of valid subscriptions may be ascertained and proper measures taken thereupon.

3. The second auditor shall forthwith give public notice, in such newspapers as he may think proper, or as the president and directors of the James river company shall direct, of the return of the books and of the amount of subscriptions appearing upon them; and after the expiration of twenty days from the publication of such notice, the president and directors shall proceed to ascertain the amount of valid subscriptions, regarding no person, body politic or corporate, other than the commonwealth, as a subscriber for any share, unless he shall have paid thereupon, into the bank of Virginia, or Farmers' bank of Virginia at Richmond, at least five dollars, to the credit of the James river company, and have furnished a certificate of such payment to the second auditor. If it be ascertained that three-fifths of the capital stock have not been subscribed by persons, bodies politic or corporate, other than the commonwealth, then the president and directors of the James river company shall direct the certificates of payment aforesaid to be returned to the subscribers, with the second auditor's warrant on the back thereof, for the re-payment of the money; and they shall report to the next general assembly the failure of the subscription, suggesting the probable causes thereof, and the means, if any, of obviating them.

4. When three-fifths or more of the capital stock shall have been so subscribed by persons, bodies politic or corporate, other than the commonwealth, but the whole capital shall not have been subscribed, then the commonwealth shall be regarded as a subscriber for the residue of the five millions; and if, including the commonwealth's subscription, more than five millions of capital shall have been subscribed, the subscriptions shall be reduced to five millions, by tak-

ing off the surplus from the highest subscriptions, other than that of the commonwealth; and when it shall happen that two or more of the highest subscriptions are equal, and the desired reduction cannot be made by subtracting equally from each, then it shall be decided by lot, from which subscription or subscriptions the greater number shall be subtracted; and the president and directors of the James river company shall order it accordingly.

5. When three-fifths or more of the capital stock shall have been so subscribed, by persons, bodies politic or corporate, other than the commonwealth, having paid as aforesaid, five dollars upon each share, then the subscribers, their successors, heirs and assigns, shall be a body politic and corporate, by the name of "*The James River and Kanawha Company*," and by that name shall have perpetual succession and a common seal, may sue and be sued, plead and be impleaded, purchase and hold, sell and convey real and personal property; and shall be, to every intent and purpose in law, the successors of the present James river company: provided, however, that they shall hold no real estate, except that which by this act, or some other act of the general assembly, may be specially vested in them, or they may be expressly authorized to acquire for the purpose of the improvements which they are required to make: and that they shall in no wise deal as bankers or merchants, or in buying and selling any produce or commodities whatsoever, except such as it is obviously convenient and proper for them to purchase and sell in the regular performance of the duties required of them by this act: and that they shall not be engaged in the establishment or conduct of manufactures, further than for the supply of their own consumption and that of the persons in their service, and in letting to farm or lease sites for mills and other machinery and water for their use.

6. The president and directors of the James river company, as soon as they shall have ascertained that three-fifths of the capital stock have been subscribed as aforesaid, so that the subscribers have become a body corporate, shall make publication of the fact in such newspapers as may be best suited to give notice to the stockholders, and shall appoint a day not more distant than thirty days for a general meeting of the stockholders, at some fit place in the city of Richmond, to the end that the company may be organized by the appointment of proper officers and agents. If on the day appointed a sufficient number of stockholders do not attend to constitute a general meeting, those present may adjourn from time to time till a sufficient number shall attend. To this meeting the second auditor shall deliver the original books of subscription, together with the certificates of payment into the banks by the subscribers, endorsing thereon his warrants for their payment to the order of the new company.

7. To constitute a general meeting, there must be present, either in person or by proxy, a number of stockholders, having a right to

give a majority of all the votes which could be given at a meeting of all the stockholders.

8. Each stockholder shall be entitled to one vote for each share held by him, as far as ten shares, and to one vote for every five shares above ten.

9. There shall be a stated general meeting of the stockholders at some fit place in the city of Richmond, on the second Monday in December in each year, or at such other time as the by-laws of the company may prescribe; and there shall be extra general meetings of the stockholders, convened from time to time, as occasion may require, in such manner as may be ordered by the by-laws. If on the day appointed for any stated annual meeting, a sufficient number of stockholders shall not attend, to constitute such meeting, it shall stand adjourned from day to day until a sufficient number shall attend.

10. The stockholders, in general meeting, shall have power to make all such by-laws, rules and regulations, not inconsistent with the constitution or laws of the land, as they may deem proper, for the well ordering of the affairs of the company, for the protection and preservation of their property, and for the maintenance of good order and good police among their officers, agents, servants and labourers, and among the boatmen and others who use their canal and other works.

11. At the first general meeting and at each stated annual meeting thereafter, the stockholders shall appoint a president and seven directors of the company, who shall hold their offices for one year and thereafter, until their successors shall be appointed, unless sooner removed by the stockholders in general meeting. Vacancies in the office of president or director shall be supplied by the stockholders in general meeting, or in such other manner as the by-laws may prescribe.

12. There shall be such other officers and agents of the company as they may think proper. Their duties, the tenure of their office and the mode of their appointment shall be prescribed by the by-laws; and bond with security for the performance of their duties may be required from any of them. The salary, pay and emoluments of the president, directors and all other officers and agents, shall be regulated by the by-laws.

13. Minutes of the proceedings of the stockholders at all general meetings, verified by the signature of the chairman or other presiding officer, shall be regularly kept and carefully preserved, in well bound books; and the names of all the stockholders present, whether in person or by proxy, shall be always entered on the minutes.

14. The president and directors of the company, subject to the control of the by-laws, shall be charged with the immediate care and superintendence of the affairs of the company; with making and executing their contracts, either by themselves, 76

or by their lawful agents; with constructing and preserving their works; with the custody and preservation of all the property of the company; and with the control and direction of all their agents. A quorum for the transaction of business, shall consist of the president and a majority of the directors; or when the president is absent, of the directors, or any five of them, one of whom shall be appointed president, pro tempore.

15. They shall keep a regular journal of their proceedings, verified by the signature of the president, and preserved in well bound books, wherein the names of the members present shall be always entered, and the vote of each member recorded. They shall cause regular books of account to be kept of all the receipts and disbursements, and of all the dealings of the company; and shall cause their books to be regularly balanced, semi-annually, on such days as the stockholders in their by-laws shall appoint.

16. They shall keep a regular roll of their stockholders, and shall furnish to each one or more certificates of his stock as may be required, verified by the seal of the corporation, and the signature of the president. The stock shall be deemed personal estate, and as such, shall pass to purchasers, executors or administrators. Before the dividends on such stock shall be paid to any purchaser, executor or administrator, regular evidence of title shall be exhibited to the president and directors, and the original certificate of stock, or satisfactory proof of its loss, shall be produced; whereupon, the stock shall be transferred upon the books, and a new certificate or certificates granted. Until such evidence of title shall be produced to the president and directors, or they shall be restrained by legal process, they shall be justified in paying the dividends to the persons in whose name the stock stands upon their books; and the company shall not be chargeable therefor to any other claimant.

17. Within thirty days after the adjournment of the first general meeting of the stockholders, of which public notice shall be given in such newspapers as the president and directors may think proper, the stockholders other than the commonwealth, shall pay into one of the banks aforesaid, or into one of their offices of discount and deposit such as the president and directors may designate, the further sum of five dollars on each share of their stock; and they shall pay the residue of their subscriptions in such sums, at such times and in such manner, as the exigencies of the company may demand, and as the president and directors may from time to time require.

18. If any stockholder shall fail to pay the sum required of him by this act, within thirty days after the adjournment of the first general meeting, public notice having been given thereof in the manner above required, or shall fail to pay any other part of the subscription lawfully required of him by the president and directors, after such requisition shall have been advertised four weeks in some public newspaper printed in the city of Richmond, it shall be

lawful for the president and directors, after advertising the time and place of sale for four weeks, in some newspaper so published, to sell at public auction for cash, the share or shares of the delinquent stockholder, and to convey and transfer the same to the purchaser. And the said president and directors, after retaining from the purchase money the costs and charges of the sale, and the amount in arrear, and due to the company, shall pay over the surplus, if any, to the said stockholder, or his legal representative. If the purchase money shall be insufficient to pay the cost and charges of the sale, and the sum in arrear and due to the company, then the delinquent stockholder, as well as the original subscriber for the stock, and the heirs, executors and administrators of each of them shall be liable for the payment of the balance; and such balance may be recovered of the original subscriber and delinquent stockholder, jointly or severally, or from the heirs, executors or administrators of either, upon motion on ten days previous notice, in the inferior or superior court of the county or corporation in which the defendants, or either of them, may be found, or by warrant before a justice of the peace, where the sum to be recovered is within the jurisdiction of a single magistrate, or by any other proper action before any court having cognizance thereof. The purchaser at such sale shall be regarded as an original subscriber, and as such, he, his heirs, executors and administrators, shall be liable for all subsequent delinquencies.

19. When the other stockholders shall have paid such proportion of their subscriptions as will be equal to the proportion of the state's subscription paid by the transfer of their property as aforesaid, then the residue of the state's subscription shall be paid from to time, as nearly as may be, in the proportions in which the other stockholders shall be required to pay the residue of their subscriptions.

20. At the expiration of thirty days from the adjournment of the first general meeting of the stockholders as aforesaid, the whole interest of the commonwealth in the works and property of the present James river company, shall be, and the same is hereby transferred to the *James river and Kanawha company*, hereby incorporated, to be held by them forever, for the sole use and benefit of the stockholders; and from thenceforward, the company hereby incorporated shall be entitled to all the tolls, rents, and other emoluments, rights, privileges and immunities, which are now enjoyed by the James river company, subject however to the incumbrances, limitations and restrictions in this act declared. The president and directors of the new company, their officers and agents, at the expiration of the said thirty days, shall take possession of the property and works hereby transferred, and enter upon the receipt of the tolls, rents, and other emoluments thereof, for the benefit of the stockholders; but until the expiration of the said thirty days, the said property and works, the tolls, rents, and other emoluments

thereof, shall be and remain for the use of the commonwealth, in the same manner as if this act had never passed.

21. The *James river and Kanawha company* shall take the property hereby transferred to them, subject to the payment of the dividend of fifteen per centum per annum forever, to the stockholders of the old company, and subject moreover to the pledge of the surplus tolls of the company made by former laws, for the security of those public creditors, who on the faith of that pledge have lent money to the James river company, for the use of the commonwealth; but the general assembly hereby pledges the faith of the commonwealth to the new company, that they shall be 78 protected from the payment of any part of the principal or interest of the debt contracted by the loans aforesaid; and to this end the profits of the commonwealth's stock in the new company, and so much of the revenue of the fund for internal improvement, as now stands pledged for that purpose, shall be faithfully applied to the payment of the interest on the said loans; and if this should prove inadequate, other sufficient funds shall be provided.

22. The *James river and Kanawha company* are charged with the duty of connecting the tide water of James river with the navigable waters of the Ohio by one of three plans of improvement, at their election; that is to say, either by a continuation of the lower James river canal to some suitable point on the river not lower than Lynchburg, a continued rail-road from the western termination of that canal to some convenient point on the Great Kanawha river below the great falls thereof, and an improvement of the Kanawha river from thence to the Ohio, so as to make it suitable for steam boat navigation: or secondly, by a continuation of the James river canal as aforesaid, and a continued rail-road from its western termination to the Ohio river: or thirdly, by a continued rail-road from Richmond to the Ohio river. And whether they elect one or another of these plans of improvement, that which they elect shall be executed in a substantial, durable and workmanlike manner; their improvements shall be kept permanently in good repair, free and fit for public use, according to the provisions of this act; and the works which they shall construct, and the property which they shall acquire by purchase or condemnation, under the authority of this law, shall be vested in them and their successors forever, for their own use and benefit, exempt from all public taxes, burdens or charges, other than those which may be imposed or authorized by this act.

23. If the company elect to continue the lower James river canal to Lynchburg, or beyond it, as part of their improvement, then that canal in all its parts from Richmond to its western termination, shall be at least forty feet wide at top, and twenty-eight feet wide at bottom, with not less than four feet depth of water at all seasons of the year, shall be provided with a convenient tow-path,

and adapted throughout its whole extent to the navigation of boats of not less than thirty-five tons burden, propelled by horses. To avoid very great expense at difficult passes, and to furnish proper accommodation to the trade on both sides of the river, the bed of the river shall occasionally be used as part of the line of navigation, when the refluent water from the dams will admit the convenient application of horse power, and the safe and easy passage of the usual canal boats. The canal at its lower termination shall be connected with the tide-water, so as to enable the boats which usually navigate it with their cargoes, at all times conveniently to pass into tide water, and descend the river or return.

24. From the highest point on James or Jackson's river to which the navigation shall be carried as aforesaid, a rail-road shall be extended by the most convenient route, either to the Ohio river, or to some suitable point on the Kanawha river, below the great falls thereof, as the company may elect. Such rail-road shall be graduated, so as to be convenient for transportation both eastward and westward, and shall be furnished with two sets of tracks, and all other works and fixtures necessary for the accommodation of the trade thereon. 79

25. If the company should not choose to extend the lower James river canal, but should elect a continued rail-road from Richmond, then they shall construct a rail-road from the tide water at Richmond, following the course of James river beyond the Blue Ridge, and thence by the most convenient route to the Kanawha river, terminating either at the mouth of that river, or at some other convenient point below the great falls, or at some convenient point on the Ohio river. And for the accommodation of the trade on both sides of James river, they shall extend proper arms of the road across the river, to all towns, and other convenient places of deposit on the opposite shore thereof.

26. If the western termination of the rail-road should be at any point of the Kanawha above its mouth, then the navigation of the Kanawha river from thence to the Ohio, shall be improved by locks and dams, or otherwise, so that at all seasons of the year, it may be conveniently and safely navigated by steam-boats of not less than one hunderd tons burden.

27. The works hereby required of the James river and Kanawha company, shall be executed with diligence, and if they be not commenced within two years after the passing of this act, and finished within twelve years after the first general meeting of the stockholders, then their charter shall be forfeited, and all the works of the company, with the land on which they are situated, and all the rights, privileges and immunities hereby granted to them, shall be vested in the present James river company, for the benefit of the commonwealth; and in that event, the present James river company shall be regarded, to all intents and purposes, as the successors of

the company hereby incorporated, in no manner, however, liable for any debts which they may have contracted, or entitled to any part of their personal property.

28. If the capital of five millions of dollars shall be found insufficient to complete the works required of the company, they shall be at liberty to enlarge their capital to any amount which may be found necessary to that end. The commonwealth shall be at liberty to take two-fifths of the additional capital, or any portion thereof, and the other stockholders to take the residue. So much thereof as shall not be voluntarily taken by the commonwealth and the other stockholders, may be raised by opening new books, and receiving new subscriptions, under the superintendence and control of the president and directors. The additional capital shall be taken in whole shares of a hundred dollars each; and the subscribers, their successors, heirs and assigns, shall be thenceforth, to all intents and purposes, members of the company in like manner as if they had been subscribers to the original capital; and shall, in like manner, be compelled to pay the amount of their subscriptions, upon the requisition of the president and directors, be subject to all the burdens, and entitled to all the privileges of the original subscribers.

29. The president and directors, their officers, agents and servants, shall have full power and authority to enter upon all lands and tenements through which they may desire to conduct their road or canal, or any feeder of the canal, or against which they may desire to abut any dam; and to lay out their road, canal, feeders and abutments, according to their pleasure, so that neither the dwelling house, yard, garden, nor curtilage of any person 80
be invaded without his consent. They shall describe by certain limits the land which they desire to occupy for the purposes aforesaid, and such contiguous land as they may desire to occupy as sites for toll-houses, warehouses, stables and other buildings, for the necessary accommodation of their officers, agents and servants, their horses, mules, and other cattle, and for the protection of the property entrusted to their care: *Provided*, That the lands so laid out on the general line of the road, canal or its feeders, shall not exceed one hundred feet in width; that the adjoining land, for the sites of buildings, shall not exceed one acre in any one parcel, or one hundred acres in the whole, and that the land for an abutment shall not exceed one acre. It shall be lawful for the president and directors to purchase and hold the land so laid out, or any part thereof. And if they cannot agree with the owner on the terms of purchase, it shall be lawful for them to apply to the court of the county in which such land, or the greater part thereof, may lie, and upon such application, the court shall appoint five discreet, intelligent, disinterested and impartial freeholders, to assess the damages to the owner from the condemnation of his land for the purposes aforesaid. No such appointment, however, shall be made, unless ten

days previous notice of the application shall have been given to the owner of the land, or to the guardian, if the owner be an infant, or to the committee, the owner being *non compos mentis*, if such owner, guardian or committee, can be found within the county; or if he cannot be so found, then such appointment shall not be made, unless notice of the application shall have been published at least one month next preceding, in some newspaper printed as convenient as may be to the courthouse of the county, and shall have been posted at the door of the courthouse on the first day at least of the next preceding term of the said court. A day for the meeting of the said freeholders to perform the duty assigned them, shall be designated in the order appointing them; and any one or more of them attending on that day, may adjourn from time to time, until their business shall be finished. Of the five freeholders so appointed, any three or more of them may act after having been duly sworn or solemnly affirmed before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from the condemnation thereof, for the use of the company, and that they will truly certify their proceedings thereupon to the court of the said county.

30. It shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land proposed to be condemned, and after viewing the same, and hearing such proper evidence as either party may offer, they shall ascertain, according to the best of their judgment, the damages which the proprietor of the land will sustain, by the condemnation thereof for the use of the company. In performing this duty, they shall consider the proprietor of the land as being the owner of the whole fee simple interest therein: they shall take into consideration the quantity and quality of the land to be condemned, the additional fencing which will be required thereby, and all other inconveniences which will result to the proprietor from the condemnation thereof, and shall combine therewith a just regard to the advantages which the owner
of the land will derive from the construction of the road or 81
canal, for the use of which his land is condemned.

31. When the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings under their hands and seals, in substance as followeth:

"We, *freeholders, appointed by an order of the county court of for the purpose of ascertaining the damages which would be sustained by , the proprietor of certain lands in the said county, which the president and directors of the James river and Kanawha company propose to condemn for their use, do hereby certify, that we met together on the land aforesaid, on the day of , the day appointed therefor by the said order, (or the day to which we were regularly adjourned, from the day appointed for*

our meeting by the said order,) and that having been first duly sworn, and having viewed the premises, we proceeded to estimate the quantity and quality of the land aforesaid, the quantity of additional fencing, which would probably be occasioned by its condemnation, and all other inconveniences which seemed to us likely to result therefrom to the proprietor of said land: that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of the said land, from the construction of the rail-road, (or canal,) for the use of which the said land is to be condemned: that under the influence of these considerations, we have estimated, and do hereby assess the damages aforesaid, at the sum of . Given under our hands and seals this day of ." At the foot of the report so made, the magistrate before whom the said freeholders were sworn, shall make a certificate, in substance as follows: "*County, set: I, a justice of the peace for said county, do hereby certify, that the above named freeholders, before they executed their duties as above certified, were solemnly sworn (or affirmed) before me, that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above named , from the condemnation of the above mentioned land, for the use of the James river and Kanawha company, and that they would certify truly their proceedings thereupon to the court of the said county. Given under my hand this day of .*"

32. The report of the freeholders so made, together with the certificate of the magistrate as aforesaid, shall be forthwith returned by the said freeholders, to the court of the county; and unless good cause be shewn against the report, it shall be confirmed by the court, and entered of record: but if the said report shall be disaffirmed, or if the said freeholders, being unable to agree, should report their disagreement, or if from any other cause, they should fail to make a report, within a reasonable time after their appointment, the court may at its discretion as often as may be necessary, supersede them, or any of them, appoint others in their stead, and direct another view and report to be made, in the manner above described.

33. On the confirmation of any such report, and on the payment or tender to the proprietor of the land, of the damages so assessed, or the payment of the said damages into court, when for good cause shewn, the court shall so have ordered it, the land viewed and assessed as aforesaid shall be vested in the *James river and Kanawha company*, in the same manner as if the proprietor had sold and conveyed it to them. 82

34. While these proceedings are depending for the purpose of ascertaining the damages to the proprietor for the condemnation of his land, and even before they shall been instituted, the president and directors, if they think that the interest of the company requires it, may by themselves, their officers, agents and servants

enter upon the lands laid out by them as aforesaid, and which they desire to condemn, and apply the same to the uses of the company. If when they so take possession, proceedings to ascertain the damages as aforesaid shall be pending, it shall be their duty diligently to prosecute them to a conclusion; or if none be then pending they shall without delay institute them, and diligently prosecute them to a conclusion. And when the report of the freeholders ascertaining the damages shall be returned and confirmed, the court shall render judgment in favour of the proprietor of the land for the amount thereof, and either compel its payment into court, or award process of execution for its recovery as to them shall seem right.

35. In the mean time no order shall be made and no injunction shall be awarded by any court or judge to stay the proceedings of the company in the prosecution of their works, unless it be manifest that they, their officers, agents or servants are transcending the authority given them by this act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

36. If the president and directors shall take possession of any land before the same shall have been purchased by them or condemned and paid for according to the provisions of this act, and shall fail for forty days to institute proceedings for its condemnation as aforesaid or shall not prosecute with due diligence the proceedings commenced for that purpose, it shall be lawful for the proprietor of the land, upon giving to the said president and directors, or any one of them, ten days previous notice, to apply to the court of the county in which the land or the greater part thereof shall lie; and upon such application the court shall appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to the owner from the condemnation of his land for the use of the company, shall appoint a day for their meeting, to perform the duties assigned them, and shall dismiss at the costs of the company any proceedings then depending on their behalf for the condemnation of the said land. The freeholders so appointed, any three or more of whom may act, shall proceed in the performance of their duties in all respects in the same manner as if they had been appointed on the application of the president and directors of the company. And the court shall in like manner confirm or disaffirm their report, supersede them or any of them, and appoint others in their stead, or direct another view and report to be made as often as may be necessary. And when any such report ascertaining the damages shall be confirmed, the court shall render judgment in favour of the proprietor for the damages so assessed, and double costs, and shall thereupon either compel the company to pay into court the damages and costs so adjudged, or award process of execution therefor as to them shall seem right.

37. When the judgment rendered for the damages assessed and

costs, shall be satisfied by the payment of the money into court, or otherwise, the title of the land for which such damages were assessed, shall be vested in the company in the same manner as if the proprietor had sold and conveyed it to them. 83

38. The said president and directors, for the purpose of constructing their canals, feeders, dams and rail-road aforesaid, and the works necessarily connected therewith, or of repairing the same after they shall have been made, or of enlarging or otherwise altering or repairing their canals, and other works now in existence, shall be at liberty by themselves, their officers, agents or servants, at any time to enter upon any adjacent lands, and to cut, quarry, dig, take and carry away therefrom, any wood, stone, gravel or earth, which they may deem necessary: *Provided, however,* That they shall not, without the consent of the owner, cut down any fruit tree, or any tree preserved in any field or lot for shade or for ornament, or take any timber, gravel, stone or earth, constituting any part of any fence or building. For all wood, stone, gravel or earth taken under authority of this act, and for all incidental injuries done to the enclosures, crops, woods or grounds, in taking or carrying the same away, the said president and directors shall make to the owner a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial, intelligent and disinterested freeholders, who, being appointed for that purpose by any justice of the peace thereto required by the owner, shall be sworn by him, and shall then ascertain the compensation upon their own view of the wood, stone, gravel or earth taken, and of the injury done as aforesaid in taking them.

39. If the said president and directors, in entering upon the land of any person under the authority of this act, for the purpose of laying out or constructing, enlarging, altering or repairing any of their said works, shall, by themselves, their officers, agents or servants, do any wanton or wilful injury to such land or its appurtenances, or to the crops growing or gathered, or to any other property thereon, the *James river and Kanawha company* shall pay to the person so injured, double the amount of the damages which shall be assessed by a jury in any proper action therefor.

40. When the works of the said company shall cross any public road, now established, or hereafter to be established, it shall be the duty of the *James river and Kanawha company* to provide, as far as possible, that no obstruction to the convenient transportation of persons or property along such road, shall be opposed by their works; and to this end, they shall always maintain, in good repair, proper bridges upon their canals, and proper passways across their rail-road, where the public roads cross them. Whensoever their works shall be conducted through the lands of any one without his consent, it shall be their duty to provide for him safe and convenient passways across their works, from one part of his land to the

other. And if, by the enlargement or alteration of the canals now in existence, any bridge thereon, which the present James river company is bound to maintain for the use of the owner of the adjoining lands, should be destroyed or injured, the new company shall, without delay, re-build or repair it, so that the owner of the adjoining lands may sustain no detriment.

41. The general assembly will be at full liberty, at any time hereafter, to authorize any other rail-road to be joined to the rail-road of the *James river and Kanawha company*, or be conducted across it, on such terms as may be just, and in such manner as not to injure the works of the James river company, or 84 obstruct the use of their road.

42. The present improvements on James river shall, as far as practicable, be kept in good repair by the company, and free for use, on the payment of the tolls now allowed, except so far as they may be substituted by the new works required by this act.

43. The *James river and Kanawha company* shall at all times keep open and in good repair, the present Kanawha turnpike, hereby to be transferred to said company, as well as the extension thereof to the mouth of Big Sandy river, from the time of the completion of the same, and shall be authorized to receive, for the use of the said road, and the extension thereof, such tolls as they may assess, provided they do not exceed those now imposed by law. In the mean time, the extension to the mouth of Big Sandy river shall be completed in the manner now required by law, under the direction of the James river company, or such other agent as the general assembly shall direct; and so soon as the same shall be completed, it shall be transferred to the possession and controul of the *James river and Kanawha company*.

44. When the improvements in the navigation of the rivers hereby authorized, shall have been made, their navigable waters shall be deemed public highways, free for the use of all persons whatsoever, paying the lawful tolls, and conforming to the lawful rules and regulations of the company; and the tolls shall be as follows: Upon James and Jackson's rivers, the company may demand and receive, on all articles transported by water on their line of improvement, such tolls as they may assess, provided they do not exceed an average of three cents per ton of two thousand two hundred and forty pounds, per mile, upon either the ascending or descending navigation, and that the tolls upon indian corn, wheat, rye, and other grains, and grass seeds; upon flour, corn meal and other meal; upon hemp, flax, cotton, tobacco, and all agricultural productions, shall not exceed two and a half cents per ton per mile; that the tolls upon salt, bar iron, pig iron, iron castings, and all other minerals and fossils, shall not exceed two cents per ton per mile; that the toll upon coal shall not exceed one cent per ton per mile; and that the tolls upon lime, lumber and gypsum, shall not exceed one half a

cent per ton per mile. These tolls shall be in lieu of the tolls now allowed by law.

45. When the improvements in the navigation hereby required shall be completed as far as Lynchburg, the tolls hereby allowed may be demanded and received upon the transportation between Lynchburg and Richmond, and shall be in lieu of the tolls now allowed on the lower canal: *Provided, however*, That until the improvements aforesaid shall be completed to the mouth of the North river in Rockbridge, the tolls from Lynchburg downward, on such articles as shall have passed the locks on the mountain canal, shall not exceed two cents per ton per mile. When the improvements shall be completed to the mouth of the North river in Rockbridge, the new tolls may be demanded and received upon the transportation below that point, in lieu of the tolls now allowed on the mountain canal: and if the aforesaid improvements shall be extended above the mouth of the North river, then the new tolls may be demanded and received upon the transportation on such parts of the extended line of improvement above that point, as may from time to time be completed and fit for use: *Provided*, That no such 85
tolls shall be received on parts of such extended line, until it shall be completed as far as Crow's ferry, and that none such shall be received on the transportation above Crow's ferry, on parts of such extended line, less than ten miles in extent.

46. Upon the Kanawha river, when the improvements on the same shall have been fully completed, as herein-before authorized and directed, from the point on said river where the rail-road may terminate, to the mouth thereof, the company may demand and receive, on all articles transported by water, on their line of improvements, in lieu of the tolls now allowed, such tolls as they may assess, provided they do not exceed one cent per ton per mile; but the tolls on salt, bar iron, pig iron and castings, shall not exceed one half of a cent per ton per mile; and upon lumber, lime, coal and gypsum, shall not exceed one-fourth of a cent per ton per mile: *Provided*, That all canoes and other small craft going to or returning from mill, shall be exempt from the payment of tolls. Until said river is rendered navigable in the manner above prescribed, from the termination of said rail-road to the mouth of the river, the *James river and Kanawha company* may demand and receive such tolls upon said river as they may assess, provided they do not exceed those now allowed by law.

47. Upon the rail-road hereby authorized, the company shall have the exclusive right of transportation. When it is completed, they shall at all times furnish and keep in good repair the necessary carriages and other requisites for the safe and convenient transportation of persons and property; and it shall be their duty at all times upon the payment or tender of the tolls hereby allowed, to transport to any convenient place of delivery on the road which the

owner of the goods may indicate, and there to deliver all articles which shall be delivered to them for transportation, or offered to them in proper condition to be transported at some place on the road convenient for the reception thereof. They shall give no undue preference in transportation to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation, with the tolls paid or tendered. If the company, or any of its officers or agents, shall fail to receive, transport or deliver, in due time, any property so offered or delivered to them for transportation, they shall forfeit and pay to the party injured double the amount of the lawful tolls paid or tendered; and shall moreover be liable to an action on the case, in which full damages and double costs shall be recovered. The company shall be liable as common carriers for any loss or injury happening to goods in their possession, or in possession of their agents for transportation.

48. If the rail-road be not extended farther east than the western termination of the James river canal, at or above Lynchburg, then the company may demand and receive for transportation thereupon, such tolls as they may assess, provided they do not exceed an average of eight cents per ton per mile; and for the transportation of persons four cents each per mile. But if the rail-road should be continued from Richmond to the Kanawha, then they may demand and receive the same tolls per mile for carriage west of Crow's ferry, at the mouth of Looney's creek, and may demand and receive east of the said Crow's ferry at the mouth of Looney's creek for the carriage of all articles of property 86 from west to east, tolls not exceeding an average of four cents per ton per mile; for the carriage of all articles of property from east to west, tolls not exceeding an average of six cents per ton per mile; and for the carriage of persons, whether eastward or westward, they may demand and receive four cents each per mile: *Provided, however,* That the tolls upon lumber, salt and the other mineral and agricultural products above enumerated, shall not exceed the respective averages above declared; that the tolls on coal shall not exceed three-fourths of these averages; and the toll on gypsum shall not exceed one-half of these averages. The tolls hereby allowed are in full for all transportation on the rail-road; and no other compensation shall be demanded or received by the company.

49. Tolls on the rail-road may be demanded and received as soon as any part thereof shall have one set of tracks completed, and shall be prepared with the necessary carriages and other requisites for safe and convenient transportation. The company, if they deem it expedient, may defer laying down the second set of tracks until one set shall be completed throughout the whole extent of the road: but they shall thereafter lay down the second with all practicable dispatch.

50. While the works are in progress, and after they are com-

pleted, the president and directors of the company shall declare and make semi-annual dividends of so much of the surplus profits of the stock, after paying the dividends due to the old stockholders, as they may deem it prudent to divide. The dividends on the commonwealth's stock, or so much thereof as may be required, shall be applied towards the payment of the interest on the loans to the James river company, and the dividends on the stock of the other stockholders, shall be paid to their order in such manner as the by-laws may prescribe.

51. The annual nett profits of the company proceeding from tolls, rents, and all other emoluments, shall never exceed fifteen per centum upon their capital stock; and the tolls shall be regulated from time to time, so as to restrain the profits within that limit. All reductions of the tolls made for that purpose shall be made rateably, on the Kanawha river, on the line between that and Crow's ferry at the mouth of Looney's creek, and on the line from thence to Richmond. To the end, that this regulation may be enforced, and that the general assembly may always be informed of the condition of the company, it shall be the duty of the president and directors of the company, annually, to report to the board of public works, or to such other public authority as the law may prescribe, the true state and condition of the company, its income from tolls, rents and other emoluments, its expenditures, and its nett profits, to the end that the commonwealth and the other stockholders may enjoy the profits of the stock in proportion to the amount of their respective capitals; the dividends declared as aforesaid upon each share, shall always be in proportion to the amount actually paid thereupon by the stockholders; and the commonwealth shall be regarded as having paid the full amount of her original subscription, from the time when her interest in the property and works of the present James river company shall have been transferred to the new company.

52. If any person shall wilfully trespass on the possessions, or do injury to the works or other property of the company, he shall be deemed guilty of a misdemeanor, and be punished accordingly; except in those cases in which the offence is of a higher grade, or otherwise specifically punished by law.

53. In the event of the said company's constructing a road for the passage of carriages and heavy loaded waggons, and keeping the same in good repair, from a suitable point at or near the lower end of the existing canal at the mountain section, to a point on or near the North river, they shall be, and are hereby authorized to erect a gate thereon, and to demand and receive such tolls as are allowed by the act passed February the seventh, one thousand eight hundred and seventeen, entitled "an act prescribing certain general regulations for the incorporation of turnpike companies."

54. This act shall commence and be in force from and after the passing thereof.

CHAPTER 14.—Act of March 15, 1833. (See title: Fund for Internal Improvement, and Board of Public Works, p. 10

CHAP. 95.—An ACT to provide for the construction of a bridge and embankment over the ravine of Campbell's creek.

[Passed February 20th, 1833.] 59

1. *Be it enacted by the general assembly*, That for the purpose of constructing a bridge and embankment over the ravine of Campbell's creek on the line of the Kanawha road, the president and directors of the James river company shall be, and they are hereby authorized and required, should the funds provided by law for the extension of the Kanawha turnpike to Big Sandy river be insufficient for the construction of the said bridge and embankment, to borrow a further sum of money not exceeding four thousand dollars, upon the same terms and conditions on which loans were authorized by the act, entitled, "an act providing for the extension of the Kanawha turnpike road to Big Sandy river," passed January the thirtieth, eighteen hundred and twenty-nine.

2. This act shall be in force from its passage.

CHAP. 84.—An ACT to provide for the repair of the Kanawha road, and for other purposes.

(Passed March 11, 1834.) 99

1. *Be it enacted by the general assembly*, That hereafter the Kanawha turnpike road and the extension thereof, shall constitute one improvement, and the number of toll-gates thereon shall be regulated accordingly. The president and directors of the James river company shall be authorized to adopt such a system for the repair and preservation of the said road, of the navigation of the Kanawha river, and of the Blue Ridge canal, and for the transaction of all business connected with those improvements, as they may deem most efficient and economical; and for the purpose of executing the same, they may appoint two agents or superintendents, assign their respective duties, and fix their salaries: *Provided*, That these salaries shall not exceed the total sum of fifteen hundred dollars.

2. *Be it further enacted*, That in order to enable the president and directors of the James river company to repair and improve the

said turnpike, and to re-build or repair the bridges belonging to the same, in a complete and effectual manner, they are hereby authorized and empowered to borrow on the credit of the state, a sum of money not exceeding ten thousand dollars, on the same terms, conditions and pledges as are prescribed for the loan authorized by the first and second sections of the act, entitled, "an act authorizing a loan for the purposes of internal improvement," passed on the first day of March, eighteen hundred and twenty-six, and so much of the said sum as shall be necessary, is hereby appropriated for the purposes above mentioned.

3. This act shall be in force from and after its passage.

KANAWHA BOARD.

CHAP. 117.—An ACT providing more effectual means for the improvement of the navigation of the Kanawha river.

Passed February 15, 1858. 91

1. Be it enacted by the general assembly, that the number of directors in the James river and Kanawha company shall be increased by the appointment of six additional directors, three of whom shall be appointed by the Board of public works, and three by the stockholders in general meeting. Two of said directors to be elected by the stockholders in general meeting, shall be elected by the stockholders other than the state, and the third by the stockholders, including the state. That the three additional directors to be appointed by the Board of public works, and two of those to be appointed by the holders, shall be residents of the Kanawha valley, and shall, with the president of the company, constitute a board to be known as The Kanawha Board; which shall be entrusted with the control, management and supervision of the Kanawha improvement; subject, however, to the instructions of the stockholders of said company. All the authority now vested in the present board of directors over the Kanawha river, shall be vested in the Kanawha board 92 of directors herein authorized to be appointed; but said Kanawha board of directors shall have no control over any of the other works or affairs of said company. The Kanawha board may elect one of their number to act as president pro tempore, who shall preside, and discharge the other duties of president of the company, relating to the Kanawha river, in the absence of the president. Three of said directors, with the president of the company, shall constitute a quorum, and in the absence of the president, four of said directors shall constitute a quorum. The said Kanawha board shall have power to adopt such by-laws and regulations and to appoint such officers and agents as they may deem necessary for the management of the Kanawha improvement: provided, that in case the president of the company shall differ with the Kanawha directors in any matter involving in his opinion the general interests of the company, he shall have authority to call a meeting of the two boards of directors together, and submit such matter to them as one board: and their decision shall be carried into effect. The third director to be elected

by the stockholders, including the state as aforesaid, shall be a member of the board of directors of the James river and Kanawha company as at present constituted, and invested with full powers as such.

2. The James river and Kanawha company are hereby authorized to borrow on the credit of their works on the Kanawha river, now existing and hereafter to be constructed under this act, and the net revenues now on hand or due and unpaid, and that may hereafter accrue therefrom, a sum or sums of money sufficient to improve the navigation of the Kanawha river, from the mouth thereof to Loup creek shoals, and are hereby authorized to issue their bonds or certificates of debt, payable at a period of not less than twelve years from the issuing and date thereof, unless the company shall think proper to pay them at an earlier time. Such bonds or certificates of debt shall bear interest at a rate not exceeding the rate of interest allowed by an act of the general assembly passed March fifteenth, eighteen hundred and fifty-six, entitled an act for the relief of rail road and other companies, and to regulate the terms on which they may borrow money; and the company shall not sell the said bonds or certificates at a less rate than that allowed in the said act. The company are also authorized to apply the net revenues derived from their works on the Kanawha river from its mouth to Loup creek shoals, directly to the improvement of said river.

3. The James river and Kanawha company are authorized and empowered to give a mortgage upon their said works on and rights in the said Kanawha river from Loup creek shoals to its mouth, as well as the works hereafter to be constructed under this act, and upon their net revenues now due or in hand, and which may hereafter accrue from the said works, for the purpose of securing the payment of the interest and the ultimate redemption of the principal of said bonds or certificates of debt; but the said mortgage shall give the power to sell the said property thereby conveyed, only in case of default in the payment of the principal of the said bonds or certificates of debt, when they shall become due, and provide for the payment of the accruing interest thereon only from the accruing net revenue from said work, except such arrears of interest as may be unpaid, if any, when the company may make default in the payment of the principal; which arrears may be provided to be then paid, together with the principal, from the proceeds of the sale of the property conveyed by the said mortgage. And a sale of the property shall not then be made, unless it shall appear that the payment of the principal of said bonds cannot be made within five years out of the revenues to be derived from said improvement. Neither the said bonds nor any other contract of the Kanawha board shall be a charge upon or in any manner enforced against the other property, resources or credit of the company. Any liens or prior claims that the state may hold

on said works, rights and revenues, are hereby suspended in favor of such parties as may loan money to said company for the purposes of this act, or become the holders of said bonds, until such loan or loans, with the accruing interest thereon, have been fully paid and discharged: provided, however, when the debt with its accruing interest, which is herein authorized to be contracted for the improvement of the Kanawha river, shall have been fully paid and discharged, the state shall be reinstated to all the rights, privileges and priorities to which she was entitled previous to the passage of this act.

4. The James river and Kanawha company are hereby authorized, when the improvement of the Kanawha river has been commenced, to collect on all articles transported on the Kanawha river, in lieu of the tolls now authorized by law, such tolls as they may assess: provided they do not exceed four cents per ton per mile, but the toll on timber, lumber and coal shall not exceed one-fourth of one cent per ton per mile; upon salt, one-half of one cent per ton per mile; and upon bar iron, pig iron, grain and flour, one cent per ton per mile; and said company are also authorized to collect a rate of toll not exceeding one cent per passenger per mile for each person traveling on steam boats on said river.

5. The James river and Kanawha company shall not be liable for injury to boats, cargoes or other property at the points undergoing improvement, unless such injury be caused by a want 93
of ordinary care by the company or its agents in constructing the work.

6. The act of assembly passed February fifth, eighteen hundred and fifty-six, entitled an act authorizing the James river and Kanawha company to borrow money to improve the Kanawha river, and to pledge the tolls on said river for that purpose, so far as its provisions are inconsistent with or are changed by the provisions of this act, is hereby repealed: provided, however, that such repeal shall not affect the validity of the pledge heretofore made by the company, in pursuance of said act, of the tolls from the Kanawha river for the improvement of the said river.

7. The stockholders of the James river and Kanawha company shall have the power in general meeting to dispense with and terminate the powers of the said Kanawha board, composed of five directors as aforesaid, at any time they may deem it expedient to do so, after the improvement of the Kanawha river from its mouth to Loup creek shoals, as provided for by this act, shall have been completed. And this act shall expire by its own limitation, if the improvement of the Kanawha river, contemplated by it, shall not be commenced in good faith on or before the first day of July eighteen hundred and fifty-nine, and be completed within four years there-

after, unless the stockholders shall determine in general meeting, before the expiration of such period, to extend the said period for completing the work: provided, however, that if this act should be permitted to expire under the foregoing limitations, the rights and liens of the holders of bonds that shall have been issued and sold in pursuance thereof, shall not be affected thereby.

8. This act shall be in force from and after the time that the stockholders of the company shall accept the same in general meeting: provided, that the legislature hereby reserves the right at any time hereafter to modify, amend or repeal the powers and privileges hereby conferred, but the right of parties who may loan money under the provisions of this act for the improvement of the Kanawha river, shall not be affected or impaired by any such amendment, modification or repeal.

CHAP. 21.—An ACT to amend the Charter of the James River and Kanawha Company.

Passed March 23, 1860. 113

1. Be it enacted by the general assembly, that the capital stock of the James river and Kanawha company be and the same is hereby increased to twelve million four hundred thousand dollars, in shares of one hundred dollars each.

2. That in addition to the shares now owned by the state in said company, the Board of public works be and is hereby directed to subscribe, on behalf of the commonwealth, for seventy-four thousand shares of said capital stock, which shall be declared by said company a six per cent. preferred stock, on which six dollars per share shall be paid to the holders thereof before any dividend shall be paid on other stock of said company; whereof seventy-two thousand shares shall be taken in full satisfaction of the debt now due from the said company to the state, and for the assumption by the state of the debt for which the state is bound as the surety for said company, and the annuity to the old James river company; and for the residue of two thousand shares, the bonds of the state for the aggregate amount of two 114 hundred thousand dollars are to be delivered to the company, to be applied to the extinguishment of the floating debt of the company: provided, that an amount of said debt equal to the amount of said bonds, shall be extinguished thereby.

3. Upon the receipt of the certificates for the said seventy-two thousand shares of stock, the Board of public works shall give to the James river and Kanawha company a receipt in full for the said several debts due to the state, and for any claims against the company

on account of the debts for which the state is responsible as security of the company, or on account of the annuity to the old James river company; and shall, by proper deeds, release to said company all liens, whether by deeds of trust, mortgages or otherwise, held by the state upon the works and property of the company, to secure any debt due to the state, or which may be guaranteed by the state.

4. Upon the receipt of the certificates for the said seventy-two thousand shares of the stock, the Board of public works is hereby directed, upon the surrender by the holders thereof, of any of the bonds of the James river and Kanawha company, for the payment of which the state is responsible, to issue to said holders a corresponding amount of the bonds of the state, made in the manner prescribed by law, payable thirty-four years after their date, and bearing interest at the rate of six per centum per annum, payable semi-annually. And the board shall thereupon cancel and file the bonds so surrendered, and deliver to the James river and Kanawha company a statement thereof, with the number, amount and date of each bond.

5. And upon the receipt of the certificates of the residue of two thousand shares of said stock, the Board of public works is directed to issue and deliver to the company the bonds of the state for the aggregate amount of two hundred thousand dollars, to be applied to the extinguishment of the floating debt of the company.

6. The James river and Kanawha company shall have authority to borrow money, at a rate of interest not exceeding 115
seven per centum per annum, payable semi-annually, and not exceeding two million five hundred thousand dollars, for the purpose of completing the canal to Covington, carrying on their other works and paying the residue of their floating debt, and to execute bonds for the amount borrowed, and deeds of trust or mortgages, pledging their works, property and net revenues for the payment of the same: provided, that they shall not borrow in any one year a greater amount than five hundred thousand dollars. The said interest shall be paid semi-annually into the treasury of the commonwealth, for the benefit of the holders of said bonds, on or before the first day of January and July in each year; and the same shall be paid to the holders thereof, upon the warrant of the second auditor, out of said funds so paid into the treasury by said company.

7. The said company, after they may have issued such bonds, shall set apart, on the first day of January and July in each year, a fund not less than the rate of one per centum per annum for a sinking fund for the payment of the principal of such bonds, or such larger rate as may be necessary to provide a fund sufficient for such redemption, at the maturity of such bonds. And the amount to be set apart annually as a sinking fund, shall be paid by the company, one-half thereof on or before the first day of January and July in each year, to the commissioners of the Sinking fund, and invested by them in stocks, as required by the general law regulating the action of said commissioners;

and the said commissioners shall keep an account of, and hold and apply the same to the redemption of said bonds, in pursuance of this act: and shall make report to the general assembly, at each session, of their proceedings under this act.

8. Nothing in this act contained shall be so construed as to render the state liable, in any manner whatever, otherwise than as a stockholder of the company, to the holders of any bonds executed for money borrowed under this act.

9. Be it further enacted, that there shall be issued to, and placed under the exclusive control of the Kanawha board of 116
directors of said company, or their successors, as constituted under the act of the general assembly entitled an act providing more effectual means for the improvement of the navigation of the Kanawha river, passed fifteenth of February one thousand eight hundred and fifty-eight, three hundred thousand dollars of the six per cent. registered stock of the commonwealth, to be issued in the mode now provided by law, and the said stock so issued shall be used by said Kanawha board of directors for the improvement of the navigation of said river, from the mouth thereof to Loup creek shoals: provided, however, said Kanawha board shall not dispose of said registered stock at less than par. And said registered stock shall not be issued for an amount exceeding one hundred and fifty thousand dollars in any one year, nor exceeding twenty thousand dollars in any one month: But before any of said stock shall be issued, the said James river and Kanawha company, by the president thereof, shall execute a deed of trust or mortgage upon the works, property and net revenue of said Kanawha line of improvement, from the mouth thereof to said Loup creek shoals, to the commonwealth, for the payment of the principal and interest of said three hundred thousand dollars: or upon the failure or refusal of said company to execute such deed of trust or mortgage, when required by the Kanawha board, then the said Kanawha board, by their president pro tempore, or other agent, may execute such deed of trust or mortgage: and the same shall be deemed to have the same effect as though it had been executed by said company: and such lien shall take precedence over any lien created by said company, to secure their bonds authorized to be issued by this act. The said Kanawha board shall pay into the treasury of the commonwealth three and one-half per centum on or before the fifteenth day of June and December of each year, on such amount of said registered stock as may be issued under this section, for interest and to provide a sinking fund. The said Kanawha board are hereby authorized and directed to prosecute the construction of said Kanawha line of improvement, free from the control or direction of the president and directors of said James river and Kanawha company, and which is known as 117
the "Eastern board," and shall have the entire control and management of the same, free from such control and direction.

10. The debts of said company, which may not be paid as authorized by this act, or if the holders thereof shall refuse to receive in payment thereof the seven per centum bonds of said company, authorized to be issued by this act, shall not, by reason of the passage of this act, be in any better condition for enforcing the payment theerof; but the liens of the commonwealth existing before the passage of this act, on the works, property and revenue of said improvement, shall, as to them, be deemed to be in full force.

11. The Board of public works shall appoint three proxies to represent the state at the meetings of the stockholders; and the proxies so appointed shall have power to cast three-fifths of all the votes cast in the appointment of the president and other officers elected by the company, except directors of said company, and in fixing the salaries of officers, and in all other questions arising in a meeting of stockholders, and shall allow to said proxies a reasonable compensation for their services. And authority is hereby given to the Board of public works to revise and alter the rates of toll charged by said company, and are directed so to do, so as to adapt them to a remunerative standard. If the location proposed for the line of the canal between the present terminus of the Virginia Central rail road at Jackson's river and the town of Covington, will interfere at any point with any proposed location of the extension of said railroad, and the engineers representing respectively the canal and the rail road cannot agree upon an independent location for each work at such points, then the Board of public works shall determine such location, having due regard to the interest of the commonwealth as a stockholder in each company; and their decision shall be binding.

12. In addition to the rights and powers heretofore granted to and conferred upon the James river company 118
and the James river and Kanawha company, for the collection of tolls on the Kanawha river, the said James river and Kanawha company, their collectors and agents, are hereby authorized and empowered to sue out an attachment before any justice of the peace, against boats and cargoes upon the Kanawha river, for tolls due and unpaid by said boats and cargoes, their owners, masters or shippers.

13. That in case the said James river and Kanawha canal company shall not complete the canal to Covington or the western terminus of the Virginia Central rail road, within six years from the passage of this act, without any further application to the general assembly for aid, either by loan from the state, subscription, or otherwise, all the property, rights, franchises, and privileges of every kind and description of the said company, shall be transferred to and become the property of the state: and provided further, that the said company shall have no authority to contract any greater amount of debts, or in any other manner than is authorized by the provisions of this bill without the consent of the general assembly: and before this

act shall take effect or the Board of public works shall make the subscription to the stock of said company, authorized by it, or release or discharge the liens which the commonwealth holds on the property of the said company, the private stockholders of said company shall, in general meeting assembled, accept the provisions of this act, and duly certify their acceptance thereof to the Board of public works.

14. Be it further enacted, that before the provisions of this act shall take effect, the said James river and Kanawha company shall, in general meeting of the stockholders, accept the same, and such acceptance shall be deemed an acceptance of all the provisions of this act, and as a complete acquiescence in and recognition of all the authority and independent and other powers conferred upon the said Kanawha board by this act.

[Wheeling Acts, Dec. 2nd, 1861, p. 37.]

CHAP. 62.—An ACT to re-organize the Kanawha Board.

Passed February 8, 1862. 37

1. Be it enacted by the General Assembly, That until the individuals holding stock in the Kanawha River improvement shall hold a meeting within the jurisdiction of this assembly for the election of directors, the board of public works shall annually appoint five directors for the Kanawha board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha River and Road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one year, and until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

2. The said Kanawha Board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty; or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; and to this end shall proceed to collect all arrears of tolls or other dues; Provided, that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money, or the issuing of bonds to supply any deficiency, not heretofore issued under the provisions of the aforesaid act passed March twenty-third, eighteen hundrd and sixty.

3. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superin- 38
tendent, who shall have supervision of both the Kanawha river and Kanawha road, whose duty it shall be to collect from the gate keepers quarterly, the net proceeds of the tolls collected by said gate keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the said board all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursements, and shall receive for his services, annually, a sum not exceeding twelve hundred dollars.

4. The said collectors shall account quarterly to the board, and pay over to them all the monies collected by them.

5. The said board shall annually make full report to the board of public works of all their acts and doings.

6. All former laws in conflict with the provisions of this act are hereby repealed.

7. This act shall be in force from its passage.

[Wheeling Acts Extra Session, May 6, 1862, p. 14.]

CHAP. 18.—AN ACT to amend and re-enact the act passed February 8th, 1862, entitled "An act to reorganize the Kanawha Board."

Passed May 15, 1862. 14

1. Be it enacted by the General Assembly of Virginia, That until the individuals holding stock in the Kanawha river improvement shall hold a meeting within the jurisdiction of this assembly, for the election of directors, the board of public works shall annually appoint five directors for the Kanawha Board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha river and road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha Company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one year, or until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had 15
been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

2. The board of public works shall appoint a collector of tolls for each of the two collection districts on the Kanawha river, with salaries to be fixed by the board aforesaid. That the said collectors shall give bond and security to the Kanawha board, in such sum, in each case, as the said board shall prescribe, for the faithful performance of the duties of their respective offices, as well as to account for the tolls collected by them respectively. The said collectors shall collect all tolls, which shall have accrued on the river in their respective districts prior to, and since the twenty-fourth of May, eighteen hundred and sixty-one, to the time of their qualification, and for this purpose may require manifests of the subjects of toll, from the parties who may owe them, to be made out on oath; and may also require such manifests of all steam boats, and other vessels navigating and carrying freight on the Kanawha river; and the said collectors shall make full report of all tolls collected, and from whom, and account quarterly to the board aforesaid for all monies collected by them and pay the same promptly to the said board or its order.

3. And the said Kanawha board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty, or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; provided that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money or the issuing of bonds, to supply any deficiency, not heretofore issued under the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty.

4. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superintendent, who shall have supervision of both the Kanawha river and road, whose duty it shall be to collect from the gate-keepers, quarterly, the net proceeds of the tolls collected by said gate-keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the board, all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road; and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursements, and shall receive for his services annually, a sum not exceeding twelve hundred dollars.

5. The said board shall, annually, make full report to the board of public works, of all their acts and doings pertaining to said road and river improvement. 16

6. All former laws, in conflict with the provisions of this act, are hereby repealed.

7. This act shall be in force from its passage.

ACTS OF THE RESTORED GOVERNMENT OF VIRGINIA, ACTS AND CONSTITUTIONAL PROVISIONS OF WEST VIRGINIA, AND ACTS OF UNITED STATES CONGRESS IN CONNECTION WITH THE FORMATION OF THE STATE OF WEST VIRGINIA.

[Wheeling Acts, Session June 11, 1861, p. 5.]

A DECLARATION OF THE PEOPLE OF VIRGINIA, REPRESENTED IN CONVENTION, AT THE CITY OF WHEELING, THURSDAY, JUNE 13, 1861.

5

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed, and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter to abolish it. The Bill of Rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the General Assembly, calling the Convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but, with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The Convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against citizens of neighboring States, with whom they have heretofore maintained friendly, social and business relations:

It has attempted to subvert the Union founded by Washington and his co-patriots, in the purer days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country:

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees:

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes:

It has, in conjunction with the State executive, instituted wherever their usurped power extends, a reign of terror intended to suppress

the free expression of the will of the people, making elections a mockery and a fraud:

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the Capital of the Union:

They have attempted to bring the allegiance of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances, treason against the former.

We, therefore, the delegates here assembled in Convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the Universe for the rectitude of our intentions, do hereby, in the name and on the behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said Convention and Executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said Convention and Executive, whether legislative, executive or judicial, are vacated.

[Wheeling Acts, Session June 11, 1861, p. 6.]

An ORDINANCE for the Reorganization of the State Government.

Passed June 19, 1861.

The People of the State of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. A governor lieutenant governor and attorney general for the state of Virginia, shall be appointed by this convention, to discharge the duties and exercise the powers which pertain to their respective offices by the existing laws of the state, and to continue in office for six months, or until their successors be elected and qualified; and the general assembly is required to provide by law for an election of governor and lieutenant-governor by the people as soon as in their judgment such election can be properly held.

2. A council, to consist of five members, shall be appointed by this convention, to consult with and advise the governor respecting such matters pertaining his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the governor.

3. The delegates elected to the general assembly on the twenty-third day of May last, and the senators entitled under existing laws to seats in the next general assembly, together with such delegates and senators as may be duly elected under the ordinances of this convention, or existing laws, to fill vacancies, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the legislature of the state, to discharge the duties and exercise the powers pertaining to the general assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the first day of July next, and proceed to organize themselves as prescribed by existing laws, in their respective branches. A majority in each branch of the members qualified as aforesaid, shall constitute a quorum to do business. A majority of the members of each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-seventh section of the fourth article of the constitution of the state.

4. The governor, lieutenant-governor, attorney-general, members of the legislature, and all officers now in the service of the state, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justices of the peace, officers of the city and municipal corporations, and officers of militia, and officers and privates of volunteer companies of the state, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

"I solemnly swear (or affirm,) that I will support the constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the state of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth of February, eighteen hundred and sixty-one, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one."

5. If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refuse so to do, it shall be the duty of the governor, upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy at some convenient and early day to be designated in said writ; of which due publication shall be made for

the information of the persons entitled to vote at such election; and such writ may be directed, at the discretion of the governor, to the sheriff or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the governor, he shall fill the vacancy without writ, but if such officer be appointed otherwise than by the governor or by election, the writ shall be issued by the governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

[Wheeling A A. Session June 11, 1861, p. 15.]

An ORDINANCE declaring null and void the proceedings of the Richmond Convention of 1861.

Passed August 9, 1861. 15

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. All ordinances, acts, orders, resolutions and other proceedings of the convention which assembled at Richmond on the thirteenth day of February last, being without the authority of the people of Virginia constitutionally given, and in derogation of their rights, are hereby declared illegal, inoperative, null, void, and without force or effect.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

[Ordinance of Convention at Wheeling, 11th June, 1861, p 16.]

An ORDINANCE to provide for the formation of a new State out of a portion of the territory of this State.

16

Passed August 20, 1861.

Whereas, it is represented to be the desire of the people inhabiting the counties hereinafter mentioned, to be separated from this commonwealth, and be erected into a separate state, and admitted into the union of states, and become a member of the government of the United States:

1. The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new state, to be called the state of Kanawha, be formed and erected out of the territory included within the following described boundary; beginning on the Tug Fork of Sandy River, on the Kentucky line where the counties of Buchanan and Logan join the same; and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the south-west corner of Hardy county; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the states of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the states of Pennsylvania and Virginia, to the Ohio river; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new state the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke and Hancock. 17

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new state, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a constitution for the government of the proposed state.

3. The convention hereinbefore provided for may change the boundaries described in the first section of this ordinance, so as to include within the proposed state the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed state, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other "Against the New State." And it shall be the duty of the commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same. 18

If on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the secretary of the commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

We,..... commissioners, and..... conducting officer, do certify, that we caused an election to be held at ....., in the county of....., at which we permitted all persons to vote that were entitled to do so under existing

laws, and that offered to vote, and that we have carefully added up each column of our poll books, and find the following result:

For a new state,.....votes; Against a new state,.....votes

Given under our hands, this....day of..... 1861.

Under which certificate there shall be added the following affidavit:

.....County, to-wit:

I,.....a justice of the peace, (or any officer now authorized by law to administer oaths,) in and for said county, do certify that the above named commissioners and conducting officer severally made oath before me, that the certificate by them above signed is true.

Given under my hand, this.....day of.....1861.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of the election, and upon demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new state, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the secretary of the commonwealth the name or names of the person or persons elected to the said convention.

6. It shall be the duty of the governor, on or before the fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance, shall be in favor of the formation of a new state, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling, on the 26th day of November next, and organize themselves into a convention; and the said convention shall submit, for ratification or rejection, the constitution that may be agreed upon by it, to the qualified voters within the proposed state, to be voted upon by the said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance, shall, for every seven thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one delegate. The said delegates shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent according to the consti-

tution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new state, and also in favor of the constitution proposed to said voters for their adoption.

9. The new state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed state, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the state of Virginia.

The lands within the proposed state, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants, issued by the proposed state, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed state now liable thereto.

10. When the general assembly shall give its consent to the formation of such new state, it shall forward to the congress of the United States such consent, together with an official copy of such constitution, with the request that the said new state may be admitted into the union of states.

11. The government of the state of Virginia as reorganized by this convention at its session in June last, shall retain, within the territory of the proposed state, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed state shall be admitted into the union by the congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said reorganized state government in any county which shall not be included within the proposed state.

A. I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

Extracts from the Constitution of the State of West Virginia proposed by a Convention which assembled at Wheeling on the 26th day of November, 1861, being the Constitution referred to in the Act passed May 13th, 1862, giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of Virginia.

CONSTITUTION OF WEST VIRGINIA.

1

ARTICLE I.

THE STATE.

1. The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The following counties, formerly parts of the State of Virginia, shall be included in, and form part of, the State of West Virginia, namely: The counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe.

And if a majority of the votes cast at the election or elections held, as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire, and Morgan, shall be in favor of the adoption of this Constitution, the said four counties shall be included in, and form part of, the State of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections, in the district composed of the counties of Berkeley, Jefferson and Frederick shall be in favor of the adoption of this constitution, then the three last mentioned counties shall also be included in, and form part of, the State of West Virginia.

The State of West Virginia shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the State of Virginia; and the territorial rights and property in, and the jurisdiction of whatever nature over, the said bed, banks and shores heretofore reserved by, or vested in, the State of Virginia, shall vest in, and be hereafter exercised by, the State of West Virginia.

3. The powers of Government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.

4. The Legislative, Executive and Judicial departments of the Government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time.

5. Writs, grants and commissions issued under state authority, shall run in the name of, and official bonds shall be made payable to, The State of West Virginia. Indictments shall conclude "against the peace and dignity of the State of West Virginia."

6. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

7. Every citizen shall be entitled to equal representation in the government, and in all apportionments of representation, equality of numbers of those entitled thereto shall, as far as practicable, be preserved.

ARTICLE VIII.

15

TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempted from taxation.

2. A capitation tax of one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, shall levy a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the Treasury but in pursuance of appropriations may by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. The Legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full.

8. An equitable proportion of the public debt of the Common- 16
wealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

[Wheeling Acts—Extra Session, May 6, 1862.]

CHAP. 1.—An ACT giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862. 1

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for

the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

4. This act shall be in force from and after its passage.

[12 U. S. Statutes at Large.]

CHAP. VI.—*An Act for the Admission of the State of "West Virginia" into the Union and for other Purposes.*

Whereas the people inhabitating that portion of Virginia known as West Virginia did, by a Convention assembled in the city of Wheeling on the twenty-sixth of November, eighteen hundred 633
and sixty-one, frame for themselves a Constitution with a view of becoming a separate and independent State; and whereas at a general election held in the counties composing the territory aforesaid on the third day of May last, the said Constitution was approved and adopted by the qualified voters of the proposed State; and whereas the Legislature of Virginia, by an act passed on the thirteenth day of May, eighteen hundred and sixty-two, did give its consent to the formation of a new State within the jurisdiction of the said State of Virginia, to be known by the name of West Virginia, and to embrace the following named counties, to wit: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, 634
Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan; and whereas both the Convention and the Legislature aforesaid have requested that the new State should be admitted into the Union, and the Constitution aforesaid being republican in form, Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State. Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of West Virginia be, and is hereby, declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever, and until the next general census shall be entitled to three members in the House of Representatives of the United States: *Provided, always*, That this

act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.

It being represented to Congress that since the Convention of the twenty-sixth of November, eighteen hundred and sixty-one, that framed and proposed the Constitution for the said State of West Virginia, the people thereof have expressed a wish to change the seventh section of the eleventh article of said Constitution by striking out the same and inserting the following in its place, viz: "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein:" Therefore—

SEC. 2. *Be it further enacted,* That whenever the people of West Virginia shall, through their said Convention, and by a vote to be taken at an election to be held within the limits of the said State, at such time as the Convention may provide, make, and ratify the change aforesaid, and properly certify the same under the hand of the president of the Convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact, and thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation.

APPROVED December 31 1862.

[Wheeling Acts Extra Session, Dec. 4, 1862, p. 71.]

No. 2.—Joint resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last.

71

Passed December 9, 1862.

Resolved, That feeling the greatest anxiety and interest in the successful issue of the movement for a new state in West Virginia, we earnestly request the house of representatives of the United States to take up and pass, without alteration or amendments, the bill which passed the senate of the United States on the 10th of July last.

ACTS RESTORED GOVERNMENT AT WHEELING TRANSFERRING PROPERTY AND MONEY TO THE PROPOSED NEW STATE.

[Wheeling Acts Extra Session, May, 1862, p. 13.]

CHAP. 15.—An ACT making an appropriation to the proposed State of West Virginia.

13

Passed May 14, 1862.

1. Be it enacted by the General Assembly, That there shall be and is hereby appropriated out of any money in the treasury, not otherwise appropriated, to the state of West Virginia, when the same shall become one of the states of the Union, one hundred thousand dollars.

2. Be it further enacted, That so much of the public revenue due the state of Virginia from the counties embraced within the boundary of the proposed state of West Virginia, including bank dividends and all money from any source whatsoever, due the state, as shall not have been paid into the treasury of the state at the time of the admission of the proposed state of West Virginia as one of the United States, shall be the property of the said state of West Virginia, and the several sheriffs and other collectors of the public revenue, and all persons holding money due the state within the said boundary, shall pay the same into the treasury of West Virginia. All of the appropriation made by this act shall be charged to the state of West Virginia, in the settlement between the states of Virginia and West Virginia.

3. This act shall be in force from its passage.

[Wheeling Acts—Extra Session, Dec. 4, 1862.]

CHAP. 68.—An ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.

58

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this

state, and being within the boundaries of the proposed state of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the state of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this state, or in the president and directors of the board of the literary fund, or the board of public works thereof, or in 59
any person or persons, for the use of this state to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the state in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed state of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the state, or by the board of public works, or the president and directors of the board of the literary fund, in any bank, bridge, or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroads, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the state, railroad or express companies, or other persons before or since the reorganization of the state government at the city of Wheeling; also all suits and their results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, license tax, assessed in the counties aforesaid, and due the state for the year eighteen hundred and sixty-three, in the hands of officers of the state or individuals, together with all the rights of the state, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys

and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the state or corporation for the use of the state, shall be the property of the state of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of all the presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the state, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the state of West Virginia, when the same shall become one of the United States.

4. Be it further enacted, For the purpose of carrying this act into effect, that suits may be brought in the name of this commonwealth for the use of the state of West Virginia, when it becomes one of the United States on any bond or claim which shall pass to or become the property of the state of West Virginia by virtue of this act.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the state of West Virginia shall duly account for the same in the settlement hereafter to be made with this state: provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.

6. It shall be the duty of the auditor of public accounts, the secretary of state, the treasurer, and the adjutant general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the State of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said state of West Virginia.

7. This act shall take effect when the proposed state of West Virginia shall become one of the United States.

[Wheeling Acts—Extra Session, Dec. 4, 1862.]

CHAP. 72.—An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.

Passed February 4, 1863.

62

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars, be, and is hereby appropriated to the state of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the states of the United States.

2. Be it further enacted, That there shall be, and hereby is appropriated to the said state of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said state of West Virginia shall become one of the United States: provided, however, that when the said state of West Virginia shall become one of the United States, it shall be duty of the auditor of this state, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said state of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state.

3. Be it further enacted, That the act passed May four- 63
teenth, eighteen hundred and sixty-two, making an appropriation of one hundred thousand dollars to the state of West Virginia, be, and the same is hereby repealed.

4. This act shall be in force from its passage.

ACTS AUTHORIZING RECEIPT OF CONFEDERATE MONEY FOR TAXES.

[Richmond, Va., 1861-2, p. 32.]

CHAP. 11.—An ACT authorizing the receipt of Confederate States Treasury notes in payment of Taxes and other Public Dues.

Passed March 22, 1862. 32

1. Be it enacted by the general assembly, that the Confederate States treasury notes shall hereafter be receivable by sheriffs and other collecting officers in payment of taxes and other public dues to the state.

2. The act shall be in force from its passage.

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 28, 1863. 3

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Confederate treasury notes receivable in payment of taxes. 33

109. The act entitled an act authorizing the receipt of Confederate States treasury notes in payment of taxes and other public dues, passed March twenty-second, eighteen hundred and sixty-two, shall be and the same is hereby amended and re-enacted so as to read as follows:

"Confederate States non-interest bearing notes of the denomination of, or over five dollars, dated and issued on and after the first day of April eighteen hundred and sixty-three, shall hereafter be receivable in payment of taxes and other public dues to the state."

ACTS RELATING TO ASSESSED VALUATION OF LANDS AND LOTS 1862 AND 1863.

[Richmond Acts, 1862-3.]

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 27, 1862.

Value of lands and lots not to be changed.

73. The value of lands and lots as ascertained by the assessment made under the tenth chapter of the acts of eighteen hundred and fifty-five and eighteen hundred and fifty-six, passed March tenth, eighteen hundred and fifty-six, under subsequent special acts, and under the thirty-fifth chapter of the Code in respect to new grants, shall be permanent and not be changed, except under the provisions of the said thirty-fifth chapter in case of a partition or conveyance; and the auditor of public accounts may so far change the form of the commissioner's land book as to show in one column the value of lands and lots, exclusive of buildings.

[Richmond Acts, 1863-4.]

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 28, 1863.

Value of lands and lots generally not to be changed.

90. The value of lands and lots, as ascertained by the assessment made under the tenth chapter of the Acts of eighteen hundred and fifty-five and eighteen hundred and fifty-six, passed March tenth, eighteen hundred and fifty-six, under special acts, and under the thirty-fifth chapter of the Code, in respect to new grants, shall be permanent and not be changed, except under the provisions of the said thirty-fifth chapter, in case of a partition or conveyance, and except as provided by this act; and the auditor of public accounts may so far change the form of the commissioner's land book as to show in one column the value of lands and lots, exclusive of buildings.

When the value of lands and lots may be changed.

91. And inasmuch as many tracts of land and lots, with improvements thereon, situate in counties invaded by the public enemy, have

been permanently diminished in value by said invasion, and despoiled and reduced in value by military occupation, and by the waste and violence incident to war, it shall be the duty of the commissioners of the revenue for such counties, upon the requisition of the owner of any real property situate in such counties, or of his agent, to make a new assessment of such real property, upon the following basis and mode of valuation, viz: The commissioner shall deduct from the amount at which such property stands assessed at its last assessment, such sum as is equal to a fair estimate of the permanent diminution in the value thereof, caused by the invasion of such county, and of the permanent injury and damage inflicted upon such property by military occupation thereof, and the waste and violence incident to war. In making which estimate, he shall appraise and fix the amount of suche permanent diminution, injury and damage, according to what would have been the standard and rate of valuation thereof, if such permanent diminution, injury and damage had been estimated during the year eighteen hundred and fifty-six; and the remainder left, after deducting the diminution, damage and injury thus estimated, shall be the valuation at which such property shall be assessed by the commissioner.

ACTS RELATING TO ITEMS IN JOINT EXHIBIT C-1 (PARAGRAPH III OF DECREE) CLAIMED BY PLAINTIFF AND EXCLUDED BY DEFENDANT.

Trans-Alleghany Lunatic Asylum.

24

[Wheeling Acts. Extra Session, July 1, 1861, p. 24.]

No. 5.—Resolution concerning the money received from the Branch of the Exchange Bank of Virginia at Weston.

Resolved, With the concurrence of the Senate, That the money taken from the Weston Branch of the Exchange Bank of Virginia, be sold for currency, and the premium be paid to said Branch.

Resolved, That out of the currency so obtained, there be placed at the disposal of the board of directors of the Lunatic Asylum west of the Allegheny mountains, five thousand three hundred and sixteen dollars and ninety-eight cents; of which sum three thousand three hundred and sixteen dollars and ninety-eight cents shall be for the payment of work done, services rendered and materials furnished for said Asylum prior to July first, eighteen hundred and sixty-one, and the balance shall be expended in protecting the building until the work shall be resumed.

Resolved, That as soon as the state of affairs in the country will allow the further prosecution of said work, it shall be completed.

[Wheeling Acts. December 2, 1861, p. 15.]

CHAP. 22.—An ACT appropriating Twenty-one Thousand Six Hundred and Eighty-four Dollars to the Northwestern Lunatic Asylum.

Passed January 14, 1862. 15

1. Be it enacted by the General Assembly, That the sum of twenty-one thousand six hundred and eighty-four dollars be, and the same is hereby appropriated, out of any money in the treasury not otherwise

appropriated, to the Northwestern Lunatic Asylum, to be expended under the direction of the board of directors, and so much as may be necessary shall be devoted to completing the south wing of said building, being the balance of the amount taken from the branch of the Exchange Bank of Virginia, at Weston, and deposited in the treasury, by joint resolution number five, of the extra session of the legislature, in July last.

2. This act shall take effect from the passage thereof.

Brandonville, Kingwood and Evansville Road.

CHAP. 142.—An ACT to provide for the construction of a road from Brandonville to the North-western turnpike.

(Passed April 7, 1838.) 99

1. *Be it enacted by the general assembly*, That Harrison Hagan, Israel Baldwin and Benjamin Jeffers, be, and they are hereby appointed directors, who, together with two other directors to be appointed by the board of public works, shall constitute a board to superintend and direct the construction of a road from Brandonville in the county of Preston, by Kingwood, to a suitable point on 100 the North-western turnpike near Evansville. The said road shall be constructed on the route heretofore surveyed and located for such a road, and on the plan and agreeably to the conditions prescribed for the road from the mouth of Fishing creek to the state line, in the direction of Smithfield, by the act passed March the fifteenth, eighteen hundred and thirty-six, entitled, "an act to provide for the construction of a road from the Ohio river by Morgantown to the Maryland line."

2. *Be it further enacted*, That the said board of directors be and they are hereby authorized to receive subscriptions and donations in money only, from individuals and from the county court of Preston county, for the construction of said road, and the said board of directors and county court may respectively exercise the like powers in relation to the payment of such subscriptions, as are provided in such cases by the aforesaid act of the fifteenth of March, eighteen hundred and thirty-six.

3. *Be it further enacted*, That the sum of ten thousand dollars be and is hereby appropriated from the public treasury to the construction of said road, to be paid upon the like terms and conditions and in like proportions with the payments by individuals and said court, as are prescribed by the before recited act of the fifteenth of March, eighteen hundred and thirty-six. And all the provisions of the said

act in relation to the powers and duties of the said court and board of directors, the bond of the treasurer, (which shall be deposited in the clerk's office of Preston county,) the duties of said treasurer, and the powers of the board of public works, (who shall from time to time request the auditor of public accounts to issue warrants upon the treasury for the appropriation aforesaid, as it shall be called for, agreeably to the terms herein provided,) shall be held and taken to apply as effectually to this act, and to the road herein authorized to be made, as if they were specially recited herein, so far as such provisions are applicable to the purposes herein contained: *Provided*, That whenever one thousand dollars shall be paid by individuals and the said court, such amount of the aforesaid appropriation shall be paid as will be in proper proportion hereto.

4. This act shall be in force from its passage.

CHAP. 104.—An ACT to provide additional capital for the Brandonville, Kingwood and Evansville road.

[Passed February 16, 1847.] 91

1. *Be it enacted by the general assembly*, That the capital stock of the Brandonville, Kingwood and Evansville road shall be and is hereby increased the additional sum of fifteen thousand dollars, two fifths whereof, or six thousand dollars, shall be and is hereby subscribed on behalf of the commonwealth: which subscription shall be payable in the manner prescribed with respect to the appropriation to said road, made by the act passed April the seventh, eighteen hundred and thirty-eight, chapter one hundred and forty-two.

2. *Be it further enacted*, That before the treasurer of said road shall be authorized to receive any part of the above appropriation, he shall produce to the Board of public works his certificate countersigned by the president of the board, and accompanied by the affidavit of said treasurer, taken before some justice of the peace, that the requisite proportion payable by the county and individuals has been received, and accompanied by a statement of the names of each contributor, and the amount paid by each. And he shall produce a similar affidavit from time to time, as other instalments of the state subscription may be called for, until the whole amount thereof shall be paid to said treasurer.

3. This act shall be in force from its passage.

CHAP. 172.—An ACT to increase the capital stock of the Brandonville, Kingwood and Evansville turnpike company.

[Passed March 21, 1851.] 116

1. *Be it enacted by the general assembly,* That the Brandonville, Kingwood and Evansville turnpike company is hereby authorized to increase its capital stock by the additional sum of ten thousand dollars, for the purpose of planking or macadamizing portions of their road, and making a branch thereof from the wire suspension bridge on Cheat river to the Kingwood and West Union turnpike road, either by the Ashby's gap route or up the river, at the discretion of said company.

2. And the Board of public works is hereby authorized and required to subscribe on behalf of the commonwealth for the three-fifths of said additional sum or of smaller sums from time to time, of which individuals and the county court of Preston have subscribed two-fifths, until the whole of the increase of capital aforesaid has been subscribed, and to pay said subscriptions in such convenient sums as may be required for the completion and extension of said road: *Provided,* That such payments by said board shall be made *pari passu* with those of individuals and other subscribers.

3. This act shall be in force from its passage.

Clarksburg and Buchanan Turnpike Company.

CHAP. 196.—An ACT to incorporate the Clarksburg and Buchannan turnpike company.

[Passed March 9, 1848.] 219

1. *Be it enacted by the general assembly,* That for the purpose of constructing a turnpike road from Clarksburg in the county of Harrison, to Buchannan in the county of Lewis, it shall be lawful to open books for receiving subscriptions to an amount not exceeding fifteen thousand dollars in shares of twenty-five dollars each. The said books shall be opened at Clarksburg in Harrison county, under the direction of George H. Lee, Robert Johnston, Charles Lewis, Edmund L. Stealey, Richard Fowks and Hamilton G. Johnson, or any one of them; at Romine in the same county, under the direction of judge E. S. Duncan, Andrew Radcliff, John H. Shuttlesworth, Edward Stewart and Martin E. Hall, or any one of them; and at Buchannan in Lewis county, under the direction of David S. Pennell, Leonard L. D. Lowden, Adam Carper, David S. Hazelden and John B. Brake, or any one of them. 220

2. *Be it further enacted*, That when two hundred and forty shares have been subscribed, the subscribers, their executors, administrators and assigns, shall be and are hereby incorporated into a company by the name and style of "*The Clarksburg and Buchannan Turnpike Company*," subject to the provisions of the act, entitled "an act prescribing certain general regulations for the incorporation of turnpike companies:" *Provided*, That the said company may dispense with a summer or side road to their turnpike, and shall not be compelled to pave or cover the same with stone or gravel; that said road shall be cleared at least thirty feet wide and improved sixteen feet wide, and shall no where exceed a grade of four degrees.

3. *Be it further enacted*, That the Board of public works shall subscribe on behalf of the commonwealth for three hundred and sixty shares or nine thousand dollars, that sum being three fifths of the capital stock of said company: *Provided*, That before such subscription shall be made the said board shall be satisfied that two fifths of the whole capital of said company has been paid or secured to be paid by subscribers, solvent and fully able to pay, other than the commonwealth. Said subscription shall also be made subject to the provisions of the act passed February the eleventh, eighteen hundred and thirty-two. "prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth."

4. *Be it further enacted*, That the sum above authorized to be subscribed on behalf of the commonwealth shall be paid from any money in the treasury not otherwise appropriated.

5. *Be it further enacted*, That the county courts of Lewis and Harrison counties are hereby authorized to subscribe for so much as they may respectively think proper of the capital of said company: *Provided*, That at the court making such subscription a majority of all the acting justices of the county shall be present, all the acting magistrates having been summoned to attend; and further, that those voting for such subscription shall constitute a majority of the acting justices of the county. And the court so subscribing may raise the amount of such subscription by an assessment upon all the taxable property, real and personal, of citizens of the county, to be collected and accounted for by the sheriff of said county as county levies are collected and accounted for.

6. This act shall be in force from its passage.

CHAP. 177.—An ACT to increase the capital stock of the Clarksburg and Buckhannon turnpike company.

[Passed March 5, 1851.] 118

1. *Be it enacted by the general assembly*, That the Clarksburg and Buckhannon turnpike company be and is hereby authorized to in-

crease its capital stock the additional sum of five thousand dollars; and the Board of public works is directed to subscribe on behalf of the commonwealth for three-fifths of such increase, upon the same terms and in the same proportion to individual subscriptions and payments as are prescribed in relation to the subscription authorized to be made by said board by the act concerning said company, passed March the ninth, eighteen hundred and forty-eight.

2. This act shall be in force from its passage.

CHAP. 79.—An ACT to provide for macadamizing or planking certain parts of the Clarksburg and Buchanan turnpike road.

[Passed March 18, 1853.] 70

1. Be it enacted by the general assembly, that the Board of public works be and are hereby directed to have such parts of the Clarksburg and Buchanan turnpike road macadamized or planked as they may think stand in need of such improvement; and for the purpose of making said improvement, they are hereby authorized to borrow, from time to time, according to the laws now in force, such sums as may be necessary, not exceeding in any one year ten thousand dollars, and not exceeding in the aggregate the sum of twenty thousand dollars.

2. This act shall be in force from its passage.

Kingwood and West Union Turnpike Company.

CHAP. 193.—An ACT to incorporate the Kingwood and West Union turnpike company.

[Passed March 25, 1848.] 216

1. *Be it enacted by the general assembly*, That for the purpose of constructing a turnpike road from a point at or near the town of West Union on the Northwestern road in the county of Preston, to Kingwood in the same county, and thence to some point on the Beverley road west of Laurel Hill in the direction of Morgantown in the county of Monongalia, it shall be lawful to open books for receiving subscriptions to the amount of ten thousand dollars, in shares of twenty-five dollars each. The said books shall be opened at German Settlement in Preston county, under the direction of Jacob Stertsman, John Shaver and William H. Grimes, or any one of them; at King-

wood in the same county, under the direction of Buckner Fairfax, E. M. Hagans and Israel Baldwin, or any one of them; and at Morgantown in Monongalia, under the direction of Edgar C. Wilson, Alexander Hayes and William Lazier, or any one of them.

2. When one hundred and sixty shares shall have been subscribed, the subscribers, their executors, administrators and assigns shall be, and are hereby incorporated into a company by the name and style of "*The Kingwood and West Union Turnpike Company,*" subject to the provisions of the act, entitled "an act prescribing certain general regulations for the corporation of turnpike companies," passed February the seventh, eighteen hundred and seventeen: *Provided,* That the said company shall not be compelled to make a summer or side road to their turnpike; that said road shall be cleared not less than forty feet wide, and shall be improved not less than twelve nor more than eighteen feet wide, and that the grade of the same shall no where exceed four and a half degrees.

3. When two fifths of the capital stock of the company shall 217
have been paid or subscribed by persons other than the commonwealth solvent and fully able to pay, the Board of public works shall then subscribe on behalf of the commonwealth for six thousand dollars, or two hundred and forty shares, the remaining three fifths of the capital; such subscription by the Board of public works to be payable in proportion to the payment of the private subscription.

4. The sum herein authorized to be subscribed by the Board of public works shall be paid from any money in the treasury not otherwise appropriated.

5. The county courts of Monongalia and Preston shall have authority to subscribe to such amounts of the capital stock of said company as they may respectively think proper; all the acting justices of the said counties respectively having been summoned to consider of such subscription, and a majority of such justices in both or either of said counties actually voting for the same.

6. And the courts of said counties shall pay any expenses incurred within their counties by said company on account of the condemnation of land or materials for the use of said company; which expense with the subscriptions above authorized shall be paid by levies on taxable subjects other than tithables, to be laid, collected and accounted for in the manner of county levies.

7. This act shall be in force from its passage.

CHAP. 182.—AN ACT to amend the act passed March the 25th, 1848, "incorporating the Kingwood and West Union turnpike company."

[Passed March 8, 1849.] 127

1. *Be it enacted by the general assembly,* That when one fifth of the capital stock of the Kingwood and West Union turnpike company shall have been paid or subscribed by persons other than the commonwealth, solvent and fully able to pay, the Board of public works shall subscribe on behalf of the commonwealth for one half of three fifths of the capital stock of the said company; and as often thereafter as additional subscriptions to the stock of said company shall be paid by persons other than the commonwealth, or made by such persons, solvent and able to pay, the said board shall subscribe, in the same proportion as above prescribed, on behalf of the commonwealth, until the whole amount of the capital stock is subscribed.

2. *Be it further enacted,* That the president and directors of the Cheat river tollbridge company shall have authority, if they shall deem it expedient, to construct their bridge at any point across the Cheat river, not exceeding one mile above the location designated by the first section of the act incorporating the company, passed January the fifteenth, eighteen hundred and forty-eight.

3. *Be it further enacted,* That the Board of public works is directed to subscribe on behalf of the commonwealth for three fifths of the capital stock of the said bridge company, such subscription being subject to the terms and provisions contained in the eighth section of the above cited act, and being in lieu of the two fifths subscription authorized by that section.

4. *Be it further enacted,* That the further time of one year shall be given for the commencement and completion of said bridge.

5. This act shall be in force from its passage.

CHAP. 171.—An ACT to increase the capital stock of the Kingwood and West Union turnpike company.

[Passed March 24, 1851.] 116

1. *Be it enacted by the general assembly,* That the Kingwood and West Union turnpike company is hereby authorized to increase its capital stock by the additional sum of ten thousand dollars, for the purpose of finishing their road to Kingwood, and of extending it to Morgantown by such route and termini at or near Morgantown as the said company may select.

2. And the Board of public works is hereby authorized and required

to subscribe on behalf of the commonwealth for the three-fifths of said additional sum or sums from time to time, of which individuals and the county courts of Monongalia and Preston have subscribed two- fifths, until the whole of the increase of the capital aforesaid has been subscribed, and to pay said subscriptions in such convenient sums as may be required for the completion and extension of said road: *Provided*, That such payments by said board shall be made *pari passu* with those of individuals and other subscribers: *Provided*, The cost of construction of said road shall not exceed four hundred dollars per mile.

3. This act shall be in force from its passage.

CHAP. 84.—An ACT to macadamize the Morgantown, Kingwood and West Union turnpike.

Passed February 28, 1853. 71

1. Be it enacted by the general assembly, that the sum of twenty-eight thousand dollars be and the same is hereby appropriated for the purpose of macadamizing the Morgantown, Kingwood and West Union turnpike from Morgantown in Monongalia county to the Cranberry Summit in the county of Preston, on the line of the Baltimore and Ohio railroad. And the Board of public works is hereby directed to borrow the said sum to pay the said appropriation as 72
is provided by law.

2. This act shall be in force from its passage.

Berryville and Charlestown Turnpike.

CHAP. 172.—An ACT concerning the Berryville and Charlestown turnpike company.

[Passed March 12, 1849.] 120

1. *Be it enacted by the general assembly*, That the further time of two years from the passage of this act, be allowed the Berryville and Charlestown turnpike company, to begin the work of said turnpike, and that the said work shall be completed within ten years from the passage of this act.

2. *And be it further enacted*, That when it shall be shewn to the satisfaction of the Board of public works, that two fifths of the capital stock of said company has been paid into the hands of the treas-

urer of the company, or has been subscribed by solvent persons fully able to pay, and that one fourth of such two fifths has been actually paid to the treasurer, then the Board of public works are directed to subscribe, on behalf of the commonwealth, for three 121
fifths of the capital stock of said company, agreeably to the terms of the act, so far as the same are applicable, passed February eleventh, eighteen hundred and thirty-two, entitled 'an act prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth.

3. *And be it further enacted*, That the third section of the act passed March twenty-second, eighteen hundred and forty-seven, entitled "an act to incorporate the Berryville and Charlestown turnpike company," be and the same is hereby repealed.

4. This act shall be in force from its passage.

CHAP. 123.—An ACT to increase the capital stock of the Berryville and Charlestown turnpike company.

84

[Passed March 18, 1850.]

1. *Be it enacted by the general assembly*, That the Berryville and Charlestown turnpike company be and is hereby authorized to increase its capital stock the additional sum of twelve thousand dollars, so that the whole amount of capital stock may be thirty-five thousand dollars; and the Board of public works is directed to subscribe on behalf of the commonwealth for three-fifths of such increase upon the same terms and in the same proportion to individual subscriptions and payments as are prescribed in relation to the subscription authorized to be made by said board, by the act concerning said company, passed March the twelfth, eighteen hundred and forty-nine.

2. This act shall be in force from its passage.

No. 2.—Resolution in relation to the sale of works of internal improvement in which the state is interested.

289

Adopted February 26, 1856.

Resolved by the general assembly, that the board of public works be and are hereby authorized and directed to attend, either in person or by agent duly appointed by said board, the sale of any work of internal improvement in which the state is a stockholder or otherwise interested, whether such sale be made by virtue of mortgage, judg-

ment or other lien, and that said board be authorized to purchase, on the part and for the use of the commonwealth, any such public work so offered for sale, if in the judgment of said Board of public works the interest of the state would be protected or promoted thereby.

2. Be it further resolved, that no sale of any work of internal improvement in which the state is a stockholder or otherwise interested, shall take place, whether by virtue of mortgage, trust, judgment, decree or other lien, without ninety days' notice in the principal newspapers in the city of Richmond and in the local newspapers of the county wherein such improvement is situated, and further without ninety days' notice served on the Board of public works of this state by the person or persons authorized to make the sale.

CHAP. 124.—An ACT to provide for the payment fot the purchase money of the Berryville and Charlestown turnpike by the Board of public works.

Passed April 2, 1858. 95

Whereas it is represented to the general assembly, that the Board of public works, in pursuance of authority vested in them by a resolution of the general assembly, adopted on the twenty-sixth of February, eighteen hundred and fifty-six, at a sale made on 96 the eighteenth of January, eighteen hundred and fifty-eight, under a deed of trust executed to Andrew Hunter and Province McCormick, trustees, became a purchaser of the road, appurtenances and franchises of the Berryville and Charlestown turnpike, for the sum of seven thousand one hundred and fifty dollars: therefore,

1. Be it enacted by the general assembly, that a sufficient sum be and is hereby appropriated out of the public treasury to pay said sum of seven thousand one hundred and fifty dollars, together with the interest which may have accrued since the day of the sale. And the auditor of public accounts is hereby required to issue his warrant in favor of the said trustees for such sums as may be necessary to discharge the said claim.

2. Authority is hereby given to the Board of public works to appoint a superintendent of the said turnpike in the same manner that superintendents are appointed for other turnpikes having a state superintendent, whose salary is to be fixed by the said board at a sum not exceeding one hundred and fifty dollars per annum.

3. This act shall be in force from its passage.

Payments to School Commissioners in West Virginia.

CODE OF VIRGINIA, 1849.

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

* * * * *

How the fund is appropriated. 367

§6. The following sums shall be annually appropriated out of the revenue of the literary fund, that is to say:—

First. The sum of seventy thousand dollars, to be so divided among the several counties and those cities and towns which have corporation courts, that the part of every such county, city or town, shall bear to the whole sum the same proportion which its free white population may bear to the whole free white population of the State, according to the next preceding census, taken under the authority of the *United States*, and to be paid to such local officers of such counties, cities and towns, and to be applied in such manner, as may be prescribed by law. But when any new county is created out of part or parts of one or more counties, after the time of taking such census, the school commissioners of the county or counties from which the new county is taken, shall, for the fiscal year in which the new county is created, apply the quotas allotted them out of the literary fund, in such part of the new county as is taken from their county or counties, in like manner as if the new county had not been created; and for subsequent years, until a new census is taken, the second auditor shall apportion the amount of the school quotas to be paid such new county and the county or counties from which it is taken, according to the first returns of persons subject to county levies, that may be made after the creation of the new county. This section shall apply to a case in which part of a county is added to another.

Extract from foot note to Chapter LXXIX of the Code of Virginia, 1849, appearing on page 366.

On the 21st of Feb. 1818, an act passed providing for the appointment, annually, by the court of every county and corporation, of commissioners of schools, at which poor children were to be educated. This act appropriated for each county and corporation, annually, such

proportion of $45,000 as its free white population might bear to the whole free white population of the state.

CODE OF VIRGINIA, 1860.

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

* * * * *

Capitation Tax. 416

3. The auditor of public accounts shall annually, on the first day of January, upon the order of the second auditor, set apart and pay into the treasury, to the credit of the literary fund, for the purposes of education in primary and free schools, the amount of the capitation tax for the preceding year, after deducting therefrom the commissions of sheriffs and collectors, and the amount of insolvent returns on account of the capitation tax allowed during the preceding year. The amount of said tax for the year eighteen hundred and fifty-two, after deducting the commissions of sheriffs and collectors, shall be set apart and paid as aforesaid immediately after the passage of this act. The second auditor shall cause the amount received during the present year to be apportioned and applied to the purposes of education in primary and free schools, as far as practicable, as if it had been received on the first day of January last, and after the first day of January next, and annually thereafter, the amounts received shall be apportioned amongst the several counties, and those cities and towns which have corporation courts, in 417 the same manner as the appropriations from the literary fund for the same purposes are now or may be hereafter made, and shall be paid and applied as is now or may be hereafter prescribed by law.*

p. 43. § 1, 2, 3.

*This section is the act of 25th of March, 1853, which took effect from its passage. The constitution of the state requires at least a moiety of the capitation tax to be applied to the purposes of education in primary and free schools. Const. of Va. art. 6, §24. By act of 18th March 1856, p. 23, c. 16, the literary fund board were required to pay into the treasury to the credit of the commonwealth the sum of fifty thousand five hundred and sixty-two dollars and fifty-five cents, the amount reported by the second auditor for investment; and the auditor of public accounts was required to deliver to the said board a bond conditioned to pay the interest at the rate of six per centum per annum semiannually for that amount, and to redeem the principal at the pleasure of the general assembly.

How the fund is appropriated.

4. The following sums shall be annually appropriated out of the revenue of the literary fund, that is to say:—

First—The sum of *eighty*† thousand dollars to be so divided among the several counties and those cities and towns which have corporation courts, that the part of every such county, city or town, shall bear to the whole sum the same proportion which its free white population may bear to the whole free white poulation of the state, according to the next preceding census, taken under the authority of the United States, and to be paid to such local officers of such counties, cites and towns, and to be applied in such manner, as may be prescribed by law. But when any new county is created out of part or aparts of one or more counties, after the time of taking such census, the school commissioners of the county or counties from which the new county is taken, shall, for the fiscal year in which the new county is created, apply the quotas allotted them out of the literary fund, in such part of the new county as is taken from their county or counties, in like manner as if the new county had not been created; and for subsequent years, until a new census is taken, the second auditor shall apportion the amount of the school quotas to be paid such new county and the county or counties from which it is taken, according to the first returns of persons subject to county levies, that may be made after the creation of the new county. This section shall apply to a case in which part of a county is added to another.

Harper's Ferry Raid.

CHAP. 27.—An ACT appointing Commissioners to audit and pay the Expenses incurred by the Executive for the purchase of Arms and Munitions, and for the Defence of the Commonwealth.

128

Passed January 23, 1860.

1. Be it enacted by the general assembly, that the secretary of the commonwealth, the auditor of public accounts and the adjutant general, any two of whom may act, shall be and are hereby appointed commissioners, with authority to audit and settle all accounts for expenses incurred in assembling, arming, equipping and maintaining

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†In the first edition this sum was "seventy" thousand dollars: by act of 1850 51, p. 33, c. 41, §9, it was increased to seventy-five thousand; and by act of 1853-4, p. 25, c. 33, §1, the sum of five thousand dollars additional was annually appropriated.

troops, and for transportation and pay of same, and for the purchase of arms and munitions, and for other incidental expenses incurred in the defence of the state, and in the execution of prisoners under sentence of the circuit court of Jefferson county.

Said accounts, before being allowed, shall be sustained by proper vouchers, verified by officers in command, or shall be such accounts as were incurred in the execution of legal orders issued by competent authority. And when the said accounts are so sustained and allowed, the said commissioners are hereby authorized to direct the auditor of public accounts to issue his warrants for the several amounts thereof in behalf of those severally entitled thereto; to be paid out of any money in the treasury not otherwise appropriated: provided, however, that no account claimed by or due to any general, field or staff officer or rail road company, shall be paid by the commissioners aforesaid; but the same shall, when audited, be reported by them to the general assembly; and in auditing any account or accounts due to any rail road company in arrear or indebted to the commonwealth, the amount due from said rail road company to the state shall be first deducted: and provided further, that if the commissioners aforesaid deem it doubtful what law of congress, under the Code of Virginia, fixes the pay of company and non-commissioned officers, musicians and privates, they shall report the fact to the general assembly: provided, however, that the appropriation hereby authorized shall not exceed the sum of one hundred and fifty thousand dollars.

2. The said commissioners shall keep an accurate account 129
of all moneys allowed by them, and paid by their order. They shall ascertain also the accounts heretofore paid by orders of the executive for similar expenditures; and it shall be their duty to report both amounts to the general assembly as soon as practicable.

3. Immediately after the passage of this act, the commissioners shall advertise for the presentation of claims; and unless the same are presented within six months from the passage of this act, they shall not be considered by said commissioners.

4. The commissioners aforesaid are authorized to employ a clerk.

5. This act shall be in force from its passage.

CHAP. 28.—An ACT making an additional Appropriation to defray the Expenses incurred for the Defence of the Commonwealth.

Passed March 6, 1860 129

1. Be it enacted by the general assembly, that the board created by the act entitled an act appointing commissioners to audit and pay the expense incurred by the executive for the purchase of arms and for the defence of the commonwealth, passed twenty-third January

eighteen hundred and sixty, shall continue to audit the claims which they are authorized to audit and pay by said act, and to issue warrants on the treasury for the amount due and unpaid, under the limitations and restrictions imposed by said act; and for that purpose, an additional sum of seventy-five thousand dollars shall be and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated.

2. In the payment of any claim hereafter presented to the auditor, which has been allowed under this or the act aforesaid, no claim which shall have been assigned by the original claimant to another person prior to the passage of the joint resolution authorizing extra pay, shall be paid to any person but to the said original claimant, or his authorized agent, by an order given subsequent to the passage 130
of said resolution. But the general assembly disapprove of the principle adopted by the commission on the Harpers Ferry accounts in auditing the accounts of officers, insomuch as the allowances for horses and servants not in the service of such officers are concerned, and hereby direct the said commission to reaudit the said accounts so far as that point is concerned, and to exclude from their settlement all allowances of any kind for horses and servants not actually in the service of any officer, and all allowances for any service of a constructive nature, and not actually rendered by the officer making the claim.

3. This act shall be in force from its passage.

CHAP. 29.—An ACT making further Appropriations to pay Expenses for the Defense of the Commonwealth.

130

Passed March 28, 1860.

1. Be it enacted by the general assembly, that the additional sum of thirty-one thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of defraying the expenses incurred by the executive, in consequence of the raid on Harpers Ferry; to be expended upon the principles and under the restrictions imposed by the several acts passed at this session, making appropriations "to defray the expenses incurred for the defence of the commonwealth."

2. The commissioners appointed by the act to audit and pay the expenses incurred by the executive for the purchase of arms and for the defence of the commonwealth, passed January twenty-third, eighteen hundred and sixty, shall be and they are hereby authorized to pay all claims of officers and rail road companies which have been heretofore reported by them to the general assembly, and all claims of officers and rail road companies which may be hereafter audited by them,

upon the principles and under the limitations and restrictions imposed by the said act, and by the act making an additional 131
appropriation to defray the expenses incurred for the defence of the commonwealth, passed on the eighth day of March eighteen hundred and sixty.

3. This act shall be in force from its passage.

Surveys.

CHAP. CXIV. AN ACT directing a survey of the Shenandoah river, and the country adjacent thereto, and the South branch of the Potowmac.

(Passed March 30, 1831.) 164

1. *Be it enacted by the general assembly,* That the *ex-officio* members of the board of public works be, and they are hereby authorized and required to direct the civil engineer of the state, or one of his assistants, during the present year, to examine and survey the Shenandoah river from its mouth to the highest point capable of navigation, and also the Shenandoah valley on each side of the Massanutten mountain, with a view of ascertaining the practicability and relative advantages and disadvantages of the improvement of said river by locks and dams, or by a canal, or of a railroad through the said valley; and to estimate the cost of each method of improvement, and report the result of his examination to the said *ex-officio* members of said board, that such report may be laid before the next general assembly.

2. *Be it further enacted,* That the said engineer, or one his assistants, be also directed to survey, as soon as previous engagements will permit, the South branch of Potowmac, and report upon the practicability and expediency of its improvement by canal, locks and dams, or otherwise.

3. This act shall be in force from and after the passage thereof.

CHAP. 75.—An ACT to authorize a geological reconnoisance of the state, with a view to the chemical composition of its soils, minerals and mineral waters.

(Passed March 6, 1835.) 55

1. *Be it enacted by the general assembly.* That as soon after the passage of this act as it may be convenient, it shall be the duty of the board of public works to appoint a suitable person to make a geological reconnoisance of the state, with a view to the general

geological features of our territory, and to the chemical composition of its soils, minerals and mineral waters, and to report to the next general assembly a plan for the prosecution of a geological survey of the state, together with such facts as may have come to his knowledge during the progress of said reconnoisance, illustrative of any advantages likely to accrue from a more complete examination.

2. *Be it further enacted,* That the said board of public works shall have authority to allow to the geologist who may be employed under the provisions of this act, such compensation as they may deem reasonable, to be paid out of any unexpended moneys in the treasury: *Provided,* That such compensation shall not exceed the sum of fifteen hundred dollars.

3. This act shall commence and be in force from the passing thereof.

CHAP. 89.—An ACT directing a survey of Elk river.

(Passed February 21, 1835.)

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby authorized and directed to appoint a competent engineer to survey, without delay, Elk river from its junction with the Great Kanawha, to the Union mills in the county of Nicholas, and to report to the board the best and most practicable plan of improving the navigation thereof the probable advantages of such improvement, and the cost of the method of improvement preferred by him.

2. This act shall be in force from its passage.

No. 13.—Resolution authorizing a survey and location of a route for a branch of the North-western turnpike road from Sistersville, by way of Middlebourne, to some point of intersection with said turnpike west of Clraksburg.

(Agreed to by both houses, February 20, 1834.)

Resolved by the general assembly, That the board of public works be, and they are hereby authorized and required to appoint a competent engineer to survey and locate without delay, the most practicable and best route for a turnpike road from Sistersville, by way of Middlebourne, to some point of intersection with the North-west-

ern turnpike road, west of Clarksburg: *Provided*, That the expense of said survey and location shall not exceed the sum of five hundred dollars.

No. 16.—Resolution for a survey of a road from Lewisburg to the Blue Sulphur springs in Greenbrier.

(Agreed to by both houses, March 13, 1834.) 324

Resolved by the general assembly, That the board of public works be required, as soon as previous arangements will permit, to employ an engineer to survey and locate the route for a turnpike road from Lewisburg to the Blue Sulphur springs in the county of Greenbrier, in pursuance of the act passed at the present session.

CHAP. 105.—An ACT directing the survey of a route for a road from Moorefield to the North-western turnpike.

[Passed March 16, 1836.] 83

1. *Be it enacted by the general assembly*, That the board of public works be and they are hereby instructed to cause to be surveyed by some competent engineer, as soon as existing engagements will permit, the best practicable route for a road from Moorfield in the county of Hardy to its intersection with the North-western turnpike, at or near the residence of Charles Blue in the county of Hampshire; and that such engineer be required to report an estimate of the cost of a road of the kind most proper to be made, and the probable advantages of its construction.

2. This act shall be in force from its passage.

CHAP. 106.—An ACT directing the survey of a route for a road from the North-western road to some point on Leading creek, in the county of Randolph.

(Passed January 12, 1836.)

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby directed to instruct the principal

engineer of the state, during the present year, or as soon as his existing engagements will permit, to survey and locate a route for a road leaving the North-western turnpike at the German settlement in the county of Preston, and running about thirty miles south-west in the direction of Beverley in Randolph county, to some suitable point on Leading creek, so as to intersect the location for a road from Clarksburg to Beverley, and to report to said board the kind of road most proper to be made, and the probable 84
cost and advantages of its construction.

2. This act shall be in force from its passage.

CHAP. 107.—An Act directing the survey and location of routes for certain roads therein mentioned.

[Passed January 12, 1836.]

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby instructed to direct the principal engineer of the state to survey and locate, during the present year, or as soon as his existing engagements will permit, the best and most suitable route for a road at the lowest practicable grade, no where exceeding five degrees, from the Pennsylvania line near the farm of Bushrod Hoge in the county of Monongalia, by Morgantown, to a suitable point of the North-western road west of Cheat river, so far as to intersect the road leading from Beverley to Clarksburg, at or near the house of Solomon Yeager; and also to survey and locate, in like manner, a route from Morgantown to the Pennsylvania line, in the direction of Uniontown or Monroe, and to report to said board the probable cost and advantages of each road.

2. This act shall be in force from its passage.

CHAP. 119.—An ACT directing a survey of the Little Kanawha river.

(Passed February 20, 1838.) 89

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby directed to appoint a competent engineer to make a survey of the Little Kanawha river from its mouth to the Bulltown salt works, and report to the said board his opinion of the practicability and cost of a lock and dam navigation thereon, and

of such other mode of improvement as he may deem more advisable.

2. The act shall be in force from its passage.

Loan to the Trustees of the Town of Bath.

CHAP. 106.—An ACT to provide for the construction of a road from Bath in Morgan county, to the mouth of St. John's run on the Potomac.

[Passed March 8, 1847.] 92

1. *Be it enacted by the general assembly,* That the Board of public works be and is hereby authorized to pay from time to time, out of the Fund for internal improvement, a sum or sums of money not exceeding twenty-five hundred dollars, to the treasurer of the trustees of the town of Bath in the county of Morgan, upon the order of the said trustees, for the purpose of constructing a road from the town of Bath to the mouth of St. John's run on the Potomac. The said treasurer shall receive and account for the same, in his official character, to the said trustees, and shall pay or deliver such sums as may be required from time to time, upon their order, until the whole amount received by him under authority of this act shall be exhausted. And he shall be liable and proceeded against in like manner for any default in the payment of the money aforesaid as for other defaults upon his official bond.

2. *Be it further enacted,* That the said trustees shall have the disposition of the money aforesaid, and may employ and pay such engineer and superintendent, or other agents, as they may think proper for the construction of said road. And said trustees, by themselves and their agents, may exercise the same powers and shall be subject to the same restrictions in the acquisition of land and other materials necessary for said road as are prescribed to the president and directors of turnpike companies by the act passed February the seventh, eighteen hundred and seventeen. As soon as the road is completed they may demand and receive thereon such tolls as may from time to time be prescribed by the Board of public works; such tolls to be applied to the necessary expenses and repairs of the road; and any surplus remaining, to be applied in payment of the interest on the sum paid on the part of the commonwealth for construction of said road. Any deficiency of the nett surplus of tolls to pay said interest may be paid from the receipts on account of bathing at the medicinal springs belonging to the commonwealth in said town of Bath.

3. *Provided,* That no part of the above appropriation shall be advanced by the Board of Public works until the said trustees shall have given bond with good security, payable to the said board and approved by them, for the punctual payment of interest annually on the sum advanced by the commonwealth for the construction of said road: and for any default in the payment of such interest, the said board may recover judgment against said trustees upon motion in the county or superior court of Morgan county, by giving ten days notice of such motion.

4. This act shall be in force from its passage.

ACTS RELATING TO ITEMS IN JOINT EXHIBIT D-1, (PARAGRAPH IV OF DECREE) CLAIMED BY PLAINTIFF AND EXCLUDED BY DEFENDANT.

400

Tobacco Receipts.

CODE OF VIRGINIA, 1849.

CHAPTER LXXXVII.

OF THE INSPECTION OF TOBACCO.

* * * * *

R. C. p. 148, 151, § 28, 32, 61.

§ 8. The governor may require the inspectors of the public warehouses, belonging to the state, to have all proper repairs of said warehouses made, the expense whereof, on being allowed by the governor, shall be paid by the inspectors out of the rents received by them for the use of the state. 402

Books to be kept by inspectors; they prohibited from trading in tobacco; not liable for defects of tobacco delivered out. 407

§ 40. The inspectors shall provide and keep books in which they shall enter the numbers, weight, marks and owners' names, of all tobacco received, inspected or delivered out by them, as well at the time the same was received, as at the time the same was inspected or delivered out, and note the state and condition of each hogshead or cask; and in which also they shall keep fair and true accounts of all money received by them to the use of the proprietors of the warehouses or of the commonwealth, or for any tobacco sold by the min pursuance of law. 408

Salaries of inspectors; and other charges for inspection.

§ 44. The salaries to the inspectors in any warehouse are to be paid out of the receipts for inspection at such warehouse, and in no case is the state to be charged therewith, or with any other expenses of such warehouse.

Waste and sample tobacco, or tobacco remaining three years in warehouse, to be sold. 409

§ 52. All waste tobacco, and all samples drawn and not taken away from any warehouse by the owner or purchaser of the tobacco, shall be carefully preserved by the inspectors for the benefit of the state. Such samples and waste tobacco shall from time to time be sold, for the use of the state, by the inspectors, who shall have a commission of five *per centum* on the proceeds.

§ 54. When any tobacco shall have remained in any warehouse undemanded for three years from the time of its reception therein, the inspectors for each warehouse shall advertise in some newspaper published convenient to said warehouse, for three weeks successively, a list of the marks, numbers and weight of such tobacco, with the names of the persons to whom notes or receipts for it were given; and, if no owner claim the same, within three months after such advertisement, they shall proceed to sell the same and have the like commission on the proceeds as is prescribed in the fifty-second section for waste tobacco. The proceeds of such sale shall be paid into the treasury, after deducting therefrom all legal charges for storage, rent, duty and inspectors' fees. The amount so paid into the treasury, shall be refunded to the owner of said tobacco when he shall establish his right thereto. 410

2 R. C. p. 67, § 70.

Inspectors to account for and pay money, received by them.

§ 56. Inspectors of tobacco shall annually return to the first auditor an account on oath of all money received, or which ought to be received by them for the state, within the year ending the thirtieth day of September, and they shall, before the tenth day of October, pay into the treasury all balances due to the state on such account. The said account shall state the number of hogsheads, casks or parcels, of tobacco received and delivered out during the said year.

Id. p. 158, § 48, 49.

Liability of commonwealth or inspectors for tobacco burnt.

§ 58. If any tobacco in any warehouse, where the same was received for inspection, shall, within a year from the date of its being received, be damaged therein by fire, the owner thereof may recover from the state a sum equal to the damage so sustained.

2 R. C. p. 67, § 67. 1825-6, p. 14, § 7. 3 Leigh 20

§ 59. If any tobacco, stored in any warehouse belonging to the state, be so damaged at any time while remaining in said warehouse, the owner may in like manner recover the amount of his damages.

Id.

§ 60. If the inspectors at any warehouse belonging to the state refuse to receive any inspected tobacco on storage, (of which refusal

Id.

they shall give a certificate,) and the same shall be stored in any other warehouse established by law in the same town, and be therein damaged by fire at any time within a year after such refusal, the owner of such tobacco may in like manner recover the amount of his damages.

Commissioners to examine warehouses; how inspectors may be removed. 412

C. p. 162, § 52. § 72. The court having the power to nominate inspectors to a warehouse shall annually appoint one or more commissioners, who shall visit such warehouse at least once in every two months, and report to the said court its condition, the quantity of tobacco it is capable of containing, and what repairs, if any, are required.

C. p. 162. § 75. Every such commissioner shall be allowed by said court two dollars for every day he is employed, which shall 413 be paid out of the treasury from the tobacco fund.

Constitutional Conventions.

CHAPTER 15.—An act to organize a Convention.

(Passed February 10th, 1829.) 17

Whereas, in pursuance of the act of the General Assembly, passed at the last session, entitled, "an act concerning a Convention," the sense of the good people of this Commonwealth has been taken on the question, whether they desire a Convention to amend the State Constitution, or not; and it has been thus ascertained, that it is the wish of the people that a Convention shall be called for the purpose aforesaid: In order, therefore, to the forming and assembling of such Convention:

1. *Be it enacted*, That the persons qualified according to law to vote for members of the House of Delegates, in each county, city and borough, within the several Senatorial districts of this Commonwealth, as at present established by law, shall assemble at their respective court-houses, or other places appointed by law for holding elections of members of the General Assembly, on the several court days of each county, city and borough, composing a district, in the month of May, in the year of our Lord one thousand eight hundred and twenty-nine, and then and there vote for four discreet and proper persons as members of the said Convention.

* * * * *

12. Every person authorised by law to compare the polls, as 20 aforesaid, shall receive for his services therein, one dollar and sixty seven cents for every day on which he shall necessarily attend

at the place appointed by law to compare said polls, together with all charges for ferriage and tolls, and four cents a mile for travelling to and from the county in which he shall meet for that purpose. Every claim for the compensation hereby allowed, shall be presented to the court of the county or corporation in which the claimant may live; shall be verified by the affidavit of the claimant, and by such other evidence as shall be satisfactory to the court, and being certified by them to be correct, shall be allowed by the Auditor and paid out of the public treasury.

* * * * *

14. The persons who shall be elected in pursuance of the provisions of this act, shall on the first Monday in October, in the year of our Lord one thousand eight hundred and twenty-nine, meet and assemble at the Capitol in the city of Richmond, in general Convention, to consider, discuss and propose a new Constitution, or alterations and amendments to the existing Constitution of this Commonwealth.

15. The said Convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess and enjoy, in the most full and ample manner, all and every the privilege and privileges, which members elected to, and attending on the General Assembly, are entitled to; and moreover, shall be allowed the same pay for travelling to, and attending on, and returning from the said Convention, as is now allowed to the members of the General Assembly for travelling to, attending on, and returning from the same; and the said Convention shall be and is hereby empowered to appoint such officers, and to make them such reasonable allowances for their services as it shall deem proper; which several sums shall be allowed by the Auditor, and paid by the Treasurer of this Commonwealth.

* * * * *

CHAP. 8.—AN ACT to take the sense of the people upon the call of a convention, and providing for organizing the same.

[Passed March 4, 1850.] 9

Whereas it is represented to the general assembly, that a portion of the good people of this commonwealth are desirous of amending the constitution of the state:

1. *Be it therefore enacted*, That it shall be the duty of the officers authorized to conduct elections within this commonwealth, at the time and places of holding their respective elections for delegates to the general assembly in the month of April next, to open separate polls for the purpose of taking the sense of the people upon the question, whether they desire a convention or not. The polls to be opened shall contain two columns, and shall be headed on the one

side of the poll-book thus: "Shall there be a convention to amend the constitution of this commonwealth?"

CONVENTION. | NO CONVENTION.

The officers conducting the elections shall take the vote on the question aforesaid, of every person qualified, according to the existing laws of this commonwealth, to vote for delegates to the general assembly, who shall come forward during such election to give his vote, and shall cause the names of those who vote for a convention to be written in the first column under the word "Convention:" the names of those who vote against a convention, to be written in the second column under the words "No convention:" and no person shall be permitted to vote on said question more than once, either in the same county or in different counties.

* * * * *

11. The said convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess, and enjoy, in the most full and ample manner, all the privileges 11
which members elected to, and attending on the general assembly are entitled to; and moreover shall be allowed the same pay for travelling to, attending on, and returning from the said convention, as is now allowed to members of the general assembly for like services. And said convention is hereby empowered to appoint such officers, and to make them such reasonable allowances for their services as it shall deem proper, which several allowances shall be audited by the auditor of public accounts, and paid by the treasurer of the commonwealth upon proper warrants.

* * * * *

16. The sheriffs or other officers shall receive the same com- 12
pensation, and be paid in like manner for attending and comparing the polls under this act, as in cases of senatorial elections.

Slaves Transported and Executed.

[REVISED CODE OF VIRGINIA, 1819.]

C. 111.

An act reducing into one, the several acts concerning Slaves, Free Negroes and Mulattoes.

[Passed March 2, 1819.]

* * * * *

37. THE value of a slave condemned to die, who shall suffer 430
accordingly, or, before execution of the sentence, perish, 'escape,' or be sold for transportation by the Executive, to be estimated by the justices triers, shall be paid by the public to the owner.

* * * * *

39. THE Governor, with the advice of Council, shall be and is hereby authorised, when it shall be deemed expedient, to contract and agree with any person or persons, for the sale and purchase of all those slaves who may be under sentence of dath, for conspiracy, insurrection or other crimes. The person or persons, at the time of making such purchase, shall enter into bond with sufficient security, in the penalty of one thousand dollars for each slave, payable to the Governor and his successors, for the use of the literary fund, with condition that he or they will carry out of the United States, all the slaves by him or them purchased, who may be under sentence of death; and the sale and disposal of every such slave shall amount to a reprieve of him or them from such sentence of death; *Provided always,* That if any slave, sold pursuant to this act, shall return into this State, he shall be apprehended and executed under the condemnation of the court, as if no reprieve had taken place. 'And the owner or owners of any slave 'so executed, shall not be 'entitled to receive compensation from the public for his or her 'value.'

* * * * *

41. THE owners of slaves so sold or transported, shall be paid in the same manner as for slaves executed; which payment shall be immediately made, in the same manner as for slaves executed, so soon as the Executive shall determine on the sale or transportation of them.

* * * * *

64. IT shall not be lawful for any free negro or mulatto, to 437
migrate into this Commonwealth; and every free negro or mulatto, who shall come into this Commonwealth, contrary to this act, shall and may be apprehended and carried by any citizen before some justice of the peace of the county where he shall be taken; which justice is hereby authorised to examine, send and remove every such free negro or mulatto out of this Commonwealth, into that state or island, from whence it shall appear he or she last came; and for this purpose, the sheriff or other officer, 438
and other persons, may, by such justice, be employed within the Commonwealth, upon the same terms as are by law directed in the removal of criminals from one country to another; 'and the ex-'penses and charges of such removal, to be audited and paid out of 'the treasury as other public charges.' And every free negro or mulatto, who shall come, or be brought into this Commonwealth by water, from any country, state or island, may and shall be exported to the place, from whence he or she came, or was brought; and the charges attending the same shall be paid by the importer; to be recovered by motion in the name of the Commonwealth, upon ten days previous notice thereof, in any court of record; 'and every 'free negro or mulatto so removed or exported, and thereafter re-

'turning to this Commonwealth, (unless it be in consequence of 'shipwreck or some other unavoidable necessity,) upon proof thereof 'made before any magistrate of this Commonwealth, shall receive, 'by order of such magistrate, thirty-nine lashes on his or her bare 'back well laid on; which punishment may, at the discretion of any 'magistrate, be repeated once in every week, so long as such free 'negro or mulatto shall remain within the Commonwealth.'

[CODE OF VIRGINIA, 1849.]

CHAPTER XVII.

102

* * * CONCERNING THE GOVERNOR'S POWERS AND DUTIES.

Power to reprieve or pardon.

1800-1, p. 24, ch. 43. 1 R. C. p. 430, § 39.

§ 19. In the case of a slave under sentence of death, the governor may order a commutation of the punishment by directing that such slave be sold, to be transported beyond the limits of the 106
United States. The governor shall cause him to be sold, and the purchaser, before delivery to him of the slave, shall pay into the treasury the price agreed, and enter into bond, approved by the governor, in the penalty of one thousand dollars, conditioned that the slave shall within three months be transported beyond the limits of the *United States*, and shall never afterwards return into this state.

[CODE OF VIRGINIA, 1849.]

CHAPTER CC.

OFFENCES BY NEGROES. 753

1822-3, p. 37, ch. 4, § 3. 1831-2, p. 21, § 6. 1847-8, p. 125, § 5.

§4. If a slave plot or conspire to rebel or make insurrection, or commit an offence for the commission of which a free negro, at the time of committing the same is punishable with death or by confinement in the penitentiary for not less than three years, he shall be punished with death. But unless it be an offence for which a free white person, if he had committed it, might have been punished with death, such slave, instead of being punished with death, may, at the discretion of the court, be punished by sale and transportation beyond the limits of the *United States.*

§ 5. If a slave commit an offence for which a free negro, if he had committed it, might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes; and if, having been once sentenced for such offence, he afterwards commit an offence for which a free negro, if he had committed it, might be punished by such confinement, he shall be punished with death, or, at the discretion of the court, by sale and transportation as aforesaid. 754

1847-8, p. 125, § 2, 3, 14, 15.

§ 6. If a slave be sentenced to sale and transportation, under either of the next two proceeding sections, the same proceedings shall be had as in the case of a slave under sentence of death, whose punishment is commuted by the governor to sale and transportation.

[Code of Virginia, 1849.]

CHAPTER CCXII.

OF PROCEEDINGS AGAINST NEGROES.

* * * * *

Of slaves condemned to death.

§ 9. The value of a slave condemned and executed, or sentenced to, or reprieved for, sale and transportation, shall be paid to the owner out of the treasury; such value shall be the cash price for which he would sell at public sale, with a knowledge of his condemnation. It shall be fixed by the court, and entered of record. 787

1 R. C. p. 430, § 37, 41. 1839-40, p. 51, c. 61, § 1. 1847-8, p. 162, [illegible]

§ 10. If such slave be a slave only for a term of years, or for the life of another person, he shall be valued accordingly.

1839-40, id. [illegible] 1847-8, p. 162, [illegible]

* * * * *

Slaves sentenced as a free man. 788

§ 19. If a negro, condemned as a free man and executed, be claimed to have been a slave, the claimant may present his petition, under oath, to the court in which the conviction was, stating the grounds of his claim, and a jury shall be empanneled to enquire into the fact. If they find that the convict was the property of the claimant, when he was executed, his value shall be ascertained by the court, and paid to such claimant. In an enquiry under this or the preceding section, the attorney for the commonwealth, in the court, shall appear for the state. 789

1847-8, p. 161, § 19, 20.

[CODE OF VIRGINIA, 1860.]

CHAPTER XVII.

* * * CONCERNING THE GOVERNOR'S POWERS AND DUTIES.

* * * * *

Commutation of punishment; * * * 121

* * * * *

1800-1, p. 24, c. 43. 1 R. C. p. 430, § 39.

20. In the case of a slave under sentence of death, the governor may order a commutation of the punishment by directing that such slave be sold, to be transported beyond the limits of the United States. The governor shall cause him to be sold, and the purchaser, before delivery to him of the slave, shall pay into the treasury the price agreed, and enter into bond, approved by the governor, in the penalty of one thousand dollars, conditioned that the slave shall within three months be transported beyond the limits of the United States, and shall never afterwards return into this state.

* * * * *

[CODE OF VIRGINIA, 1860.]

CHAPTER CC.

OFFENCES BY NEGROES.

* * * * *

1822-3, p. 37, c. 34, § 3. 1831-2, p. 21, § 6. 1847-8, p. 125, 6, § 1, 5.

7. If a slave plot or conspire to rebel or make insurrection, or commit an offence for the commission of which a free negro at the time of committing the same, is punishable with death or by confinement in the penitentiary for not less three years, he shall be punished with death. But unless it be an offence for which a free white person, if he had committed it, might have been punished with death, such slave, instead of being punished with death, may, at the discretion of the court, be punished by sale and transportation beyond the limits of the United States 816

Id. § 2, 3, 14, 15.

8. If a slave commit an offence for which a free negro, if he had committed it, might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes; and if, having been once sentenced for such offence, he afterwards commit an offence for which a free negro, if he had committed it, might be punished by such confinement, he shall be

punished with death, or, at the discretion of the court, by sale and transportation as aforesaid.

9. If a slave be sentenced to sale and transportation, under either of the next two preceding sections, the same proceedings shall be had as in the case of a slave under sentence of death, whose punishment is commuted by the governor to sale and transportation. Ante, c. 17, § 20 to 23; Post, c. 212, § 4

[CODE OF VIRGINIA, 1860.]

CHAPTER CCXII.

OF PROCEEDINGS AGAINST NEGROES.

* * * * *

Of slaves condemned to death.

9. The value of a slave condemned and executed, or sentenced to, or reprieved for, sale and transportation, shall be paid to the owner out of the treasury: such value shall be the cash price 848 for which he would sell at public sale, with a knowledge of his condemnation. It shall be fixed by the court, and entered of record. 1 R. C. p. 430, § 37, 41; 1839-40, p. 51, c. 61, § 1; 1847-8, p. 162, § 7

10. If such slave be a slave only for a term of years, or for the life of another person, he shall be valued accordingly. 1839-40, id. § 2; 1847-8, p. 162, § 8

* * * * *

19. If a negro, condemned as a free man and executed, be claimed to have been a slave, the claimant may present his petition, under oath, to the court in which the conviction was, stating the grounds of his claim, and a jury shall be impanneled to enquire into the fact. If they find that the convict was the property of the claimant, when he was executed, his value shall be ascertained by the court, and paid to such claimant. In an enquiry under this or the preceding section, the attorney for the commonwealth, in the court, shall appear for the state. 849 1847-8, p. 164, § 19, 20; Ante § 9, 10

Boundary Lines.

CHAPTER 14.—An act to settle the western limits of this state, and the dividing and boundary line between this state and the commonwealth of Maryland.

[Passed February 28, 1822.]

1. *Be it enacted by the General Assembly of Virginia*, That the governor, by and with the advice and consent of the council, be, and he is hereby authorised to appoint three commissioners 15

on the part of this state to meet such commissioners as may be appointed for the same purpose by the commonwealth of Maryland, to settle and adjust, by mutual compact between the two governments, the western limits of this state and the dividing and boundary line between this state and the commonwealth of Maryland: to commence at Fairfax's stone on the head waters of the north branch of the Potowmac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania; and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and 16
authority, to the general Assembly of this state, at the session next after the same shall have been concluded, for confirmation or rejection.

* * * * *

4. *And be it enacted*, That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorised to employ a surveyor, two chain-carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public accounts, who shall thereupon issue a warrant in favour of such surveyor for four dollars per day for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain carriers and markers employed, the number of days 17
each has been so employed, and such daily allowance as to them may seem just; whereupon the auditor of public accounts, upon application, shall issue warrants in favour of such chain-carriers and markers.

5. *Be it further enacted*, That all expenses to be incurred in running and settling the aforesaid divisional line shall be paid out of any money in the treasury of this commonwealth not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

CHAP. 32.—An ACT to settle the western limits of this State, and the dividing and boundary line between this state and the commonwealth of Maryland.

[Passed March 5th, 1833.] 24

1. *Be it enacted by the general assembly of the commonwealth of Virginia*, That the governor be and he is hereby authorized to appoint three commissioners on the part of this state, to meet such

commissioners as may be appointed for the same purpose, by the commonwealth of Maryland, to settle and adjust by mutual compact between the two governments, the western limits of this state, and the dividing and boundary line between this state and the commonwealth of Maryland, to commence at the Fairfax stone, or at the first fountain of the Cohongoroota or North branch of the Potomac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania. If, however, the commonwealth of Maryland shall fail to appoint commissioners, then, and in that event, the commissioners appointed by the governor of this commonwealth, or any two of them, shall run and mark said line, according to the provisions of this bill: and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and authority, to the general assembly of this state, at the session next after the same shall have been concluded, for confirmation or rejection:

And whereas, sundry citizens of this state, may hold lands in virtue of patents granted by the commonwealth of Maryland, before the divisional line shall have been settled and adjusted between the two states, and as it is proper that all inhabitants on either side of the boundary line, so to be settled and adjusted, who shall have obtained patents for their lands in Virginia or Maryland, should have their titles confirmed in whichever state they may happen to fall.

* * * * *

4. *And be it enacted*, That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorized to employ a surveyor, two chain carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners, to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public accounts, who shall thereupon issue a warrant in favor of such surveyor, for four dollars per day, for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain carriers and markers employed, the number of days each has been so employed, and such daily allowance as to them may seem just: whereupon, the auditor of public accounts, upon application, shall issue warrants in favor of such chain carriers and markers.

5. *Be it further enacted*, That all expenses to be incurred in running and settling the aforesaid divisional line, shall be paid out of any money in the treasury of this commonwealth, not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

No. 4.—Preamble and resolutions relative to the boundary between Virginia and Ohio.

[*Adopted March 23, 1847.*] 237

1. *Resolved by the general assembly of the state of Virginia,* That a board to consist of three commissioners, citizens of Virginia, be appointed by the governor of this state, who shall be authorized to meet a like board, to be appointed by the state of Ohio, at such time and place as may be agreed upon, and to enter into a compact with such Ohio commissioners, settling the jurisdiction or boundary, or both, upon that part of the Ohio river which divides the states of Virginia and Ohio. *Provided,* That such compact shall not be considered as binding until the same be ratified by the said states respectively, and by the congress of the United States.

2. *Resolved,* That the governor be authorized to supply any vacancy which may happen in the board of Virginia commissioners, and that said board report their proceedings, under these resolutions, to the general assembly of Virginia at the next session, and that they be allowed the sum of four dollars per day for each day they may be occupied in the business of their commission, and four dollars for every twenty miles of travel, to be paid out of any moneys in the treasury not otherwise appropriated, on the warrant of the auditor of state, who shall adjust their accounts.

3. *Resolved,* That the governor of this state forward a copy of these resolutions to the governor of the state of Ohio.

Chap. 4.—An ACT for running and marking the boundary line between North Carolina and Virginia.

Passed April 2, 1858. 4

Whereas there is some difficulty between the states of North Carolina and Virginia as to the precise point where the line dividing the two states now is: and whereas the citizens of each state immediately along the same, are equally desirous of having it more certainly fixed and established: therefore,

1. Be it enacted by the general assembly, that the governor be and he is hereby authorized and required to appoint a commissioner, who, together with the commissioner who may be appointed on the part of North Carolina, shall cause the said line to be accurately surveyed, traced, and marked with stone monuments, not exceeding five miles apart, beginning at the county line dividing Pittsylvania and Henry

counties, where it intersects with the North Carolina line, and thence running west to the intersection of the line of the state of Tennessee.

2. It shall be the duty of the commissioners, after running, locating, establishing and marking the said line, to make a report, setting forth all the facts touching the same, and to forward copies of the joint report to their respective legislatures. And upon ratification of such report by the legislatures of the states of North Carolina and Virginia, the said boundary line shall be fixed and established; to remain forever, unless changed by the mutual consent of the said states.

3. That the governor shall be and is hereby authorized to pay one-half of all the expense which may be incurred in running and marking said line as aforesaid, and also the sum of five dollars per day to the commissioner appointed by the executive of this state, for each day he may be engaged in performing the service, and ten cents per mile for each mile he may travel to and from his residence in going to and returning from the line aforesaid; to be paid, upon the order of the governor, out of any money in the treasury not otherwise appropriated.

4. This act shall be in force from its passage.

No. 14.—Resolutions concerning the Boundary Lines between Tennessee and Virginia.

Adopted March 9, 1860. 698

1. Resolved, that the general assembly do hereby disapprove and reject the line between Virginia and Tennessee, as run and reported by Leonidas Baugh and James C. Black, as commissioners on the part of Virginia.

2. Resolved, that the governor be and he is hereby authorized to settle with said Leonidas Baugh and James C. Black, for their services rendered and expenses incurred by them in running said line; and he is hereby empowered to draw his warrant on the treasury for the amount ascertained by him to be due, payable out of any money in the treasury not otherwise appropriated; and that he be further authorized, if he shall deem it necessary, to appoint a commissioner to examine the account and take evidence in relation to the said claim for compensation and expenses.

3. Resolved, that the governor be and he is hereby authorized to appoint one or more commissioners to run again and re-mark the line between Virginia and Tennessee, in strict conformity with the compact of eighteen hundred and two, ratified by the legislature of Virginia in eighteen hundred and three; and he is authorized to allow to

such commissioner or commissioners a reasonable compensation for their services.

4. Resolved, that the governor be directed to communicate a copy of these resolutions to the governor of Tennessee, with a request that the authorities of that state will concur, and appoint a commissioner on their part.

No. 15.—Resolutions concerning the Boundary Line between Maryland and Virginia.

Adopted March 10, 1860. 699

Whereas the legislatures of Maryland and Virginia have each passed an act (the former, March twenty sixth, A. D. eighteen hundred and fifty-two, and the latter, March twenty-ninth, A. D., eighteen hundred and fifty-eight), providing for the surveying, retracing and marking of the boundary line between the two states, which runs from Watkins' Point, on the Eastern Shore, to the Atlantic ocean:

And whereas, in accordance with the provisions of said acts, Colonel Thomas J. Lee, on the part of Maryland, and Colonel Angus W. McDonald, on the part of Virginia, were appointed commissioners, jointly to have (among other things) the said line retraced, surveyed and marked, and have, with the assistance of Lieutenant N. Michler of the United States corps of engineers, assigned to that service by the war department, caused said line to be retraced, surveyed and marked, and full and elaborate plats and maps of the same made and returned to each of said states: Therefore,

1. Resolved, that suitable and permanent monuments should be erected at the termini and along said line, to perpetuate the location of the same, at the joint cost of said two states, and that Virginia's portion of such cost is provided for by the said act of March twenty-ninth, eighteen hundred and fifty-eight.

2. And be it further resolved, that the governor of this commonwealth, if he deem it expedient, be and he is hereby authorized and requested to send to England a competent agent, and obtain from thence all record and documentary evidence tending to ascertain and establish the true lines of boundary between Virginia and the states of North Carolina, Tennessee and Maryland: The cost of such agency not to exceed two thousand dollars; provision for which is also made by said act of March twenty-ninth, eighteen hundred and fifty-eight.

Maps.

CHAPTER 17.—An act to provide for engraving the Map of Virginia.

[Passed February 14th, 1825.] 19

1. *Be it enacted by the General Assembly*, That the Executive of this commonwealth be, and they are hereby authorized and required, to contract for engraving the general Map of the territory of this Commonwealth, prepared in conformity with the provisions of the act entitled, "an act to provide an accurate chart of each county, and a general Map of the territory of this Commonwealth," with such person, and upon such terms as they shall think best calculated to effect the object of the said act.

2. This act shall be in force from the passing thereof.

CHAPTER 15.—An Act making provision for furnishing the public offices with the new Map of Virginia, and for other purposes.

(Passed February 11th, 1828.) 13

1. *Be it enacted by the General Assembly*, That the Executive of this Commonwealth shall be, and they are hereby authorised and required to distribute to the committee of Roads and Internal Navigation, and to each of the other standing committees of the House of Delegates, who have not heretofore been furnished therewith, a copy of the Revised Code, and such of the Sessions Acts of the General Assembly, as may be in the Executive department for distribution, which shall be preserved by the clerks of the said committees respectively, for the use of the same. And the Executive shall moreover distribute to the public offices the new Map of Virginia, in the manner following, that is to say: To the Executive Chamber, one Map of the large size, hung on rollers; to the Register's office, one Map of the large size, hung on rollers, and one of the small size, in port folio form; to the Treasury and First Auditor's office, each one Map of the small size, in port folio form; to the Second Auditor's office, one Map of the large size, hung on rollers, and one of the small size, in port folio form; and to the committee of Propositions and Grievances, and of Roads and Internal Navigation, each one Map of the large size, hung on rollers.

2. *Be it further enacted*, That it shall be the duty of the clerks of the said committees respectively, to keep and preserve the said Maps during the session of the General Assembly, subject at all times to the use and reference of the said committees; and for the more secure and better preservation thereof, the Executive shall cause to be procured,

and furnished to the said clerks, tin cases of sufficient length and capacity to contain the same, which cases, with the Maps therein, the said clerks shall, at the close of the session of Assembly, deposit in the office of the clerk of the House of Delegates, for which he shall grant a receipt.

3. *And be it further enacted*, That the Executive are hereby authorised and required to present to the Government of the United States, and of each of the States within this Union, one of the new Maps of Virginia, of the largest size, the presentation thereof to be made to the Executive departments of said governments, and in such manner as the Executive of this Commonwealth may deem most proper and expedient.

4. This act shall be in force from the passing thereof.

CHAP. 93.—AN ACT providing for a geological survey of the state, and for other purposes.

[Passed February 29, 1836.] 67

1. *Be it enacted by the general assembly*, That the president and directors of the board of public works be, and they are hereby required, as speedily as may be, to cause a complete and detailed geological survey of the entire territory of this state to be made and executed, and a careful and accurate chemical examination and analysis of the various soils which may be found in different parts thereof, as also of the principal ores, marls, saline and mineral waters within said territory.

2. *Be it further enacted*, That for the purposes of making such survey and analysis, it shall be lawful for the said president and directors to employ a competent and skilful geologist, and an assistant geologist if need be; and may also engage the services of, or employ a topographical surveyor, whose duty it shall be to make such observations and admeasurements as may be found necessary in the preparation and construction of the geological map of the state hereinafter provided for, and to perform such other labours connected with the general purposes hereby intended, as the geologist may from time to time prescibe and direct. In addition to the duties before mentioned to be performed, the geologist who may be employed by virtue of this act, shall also ascertain by accurate barometical observations the height of the principal mountains in the state; and in the progress of the surveys and examinations hereby directed, shall collect and preserve all such specimens of rocks, fossils, ores, mineral compounds and organic remains, as shall tend to exemplify the general geological structure of the state, or be in any wise useful or interesting. The specimens, so far as prac-

ticable, shall be collected in sufficient number to authorize a distribution of a suite thereof to the principal institutions of learning in the state, if it shall hereafter be found expedient to make such distribution.

3. *Be it further enacted,* That said geologist shall annually, and before the tenth day of January in each year, make report to the president and directors of the board of public works, of his progress in the work hereby authorized and required, accompanying 68
said report with such profiles and maps, together with a glossary of scientific or technical terms, as may be useful in illustrating the same; which reports, profiles and maps, it shall be the duty of the said president and directors immediately to lay before the general assembly.

4. *Be it further enacted,* That for the purpose of defraying the expenses which may be incurred under this act, a sum not exceeding five thousand dollars per annum, be and the same is hereby appropriated, to be apportioned among the several persons hereby authorized to be employed, in such manner, and in such amount as to the president and directors of the board of public works shall seem best, to be paid upon their certificate out of any moneys in the treasury not otherwise appropriated, upon the warrant of the auditor of public accounts: *Provided,* That the amount to be paid to the geologist and the assistant geologist shall not exceed the sum of three thousand dollars per annum, to be apportioned and divided between them in manner above directed, and the sum to be paid to the topographical surveyor shall not exceed one thousand dollars.

5. *Be it further enacted,* That when the entire work hereby contemplated and provided for, shall have been fully completed, it shall be the duty of the geologist in charge thereof to make a general and final report thereon, embracing in such report, in detail, the result of all the surveys, examinations and discoveries which shall have been made, geological, chemical and topographical, and all other matters connected therewith, which may be considered by him as likely to be in any manner useful to the public or interesting to science. He shall also construct and prepare for engraving, a complete geological map of the state, shewing not only the general geological structure thereof, but plainly and accurately delineating the stratification of its principal rocks, and the position and boundary of all the mineral deposites which may be now known or be ascertained by the investigations which shall have been made, accompanying said map with such a series of sections or profiles as may be necessary to a proper exhibition of the geology of the region to which they may relate. The final report, together with the map and the accompanying sections and profiles, the president and directors of the board of public works shall communicate to the general assembly as soon as may be, to be printed, engraved, published and disposed of, in such manner as to the said general assembly shall seem proper.

6. *Be it further enacted,* That the mineral materials and other

specimens which may be collected during the operations of the geologist and others who may be engaged with him, shall be carefully preserved in some convenient apartment of the library room, until otherwise provided for. A complete catalogue of such specimens and materials shall be made out, and preserved in the same apartment, shewing the name, locality and general properties and value of each, as ascertained by the analysis to which it may have been subjected, and referring to the corresponding number which shall be affixed to the specimen itself.

7. This act shall be in force from and after the passage thereof.

No 3.—Resolution providing for the preparation of a map of the internal improvements of the state.—[*Adopted March* 15, 1848.]

Resolved by the general assembly, That the Board of public 353
works cause to be prepared by C. Crozet, Esq., at a cost not exceeding fifteen hundred dollars, in some cheap and convenient form, a lithographic map of the state of Virginia, exhibiting all railroads, canals, M'Adamized and turnpike roads, constructed, surveyed or authorized in this state, distinguishing each kind of improvement, and as far as may be the condition thereof, and shewing their connection with the principal improvements of neighbouring states; and that he accompany the same with a brief outline of the history of each improvement, together with such portions of the reports of 354
engineers upon the same, as he may deem expedient; and that one thousand copies thereof be deposited in the office of said board, subject to the order of the next general assembly.

No. 5.—Resolution for completion of state map.

Adopted February 18, 1853. 358

1. Resolved by the general assembly, that for the purpose of enabling the Board of public works to improve the map of Virginia and to ascertain her true boundaries, they are hereby authorized to contract for the purchase of new plates, it being suggested that the old plates have been mislaid, and if found are unfit for use; and the said board for the same purpose are moreover authorized to cause the necessary astronomical observations to be made: provided the cost of such map and the taking of such observations shall not exceed the sum of three thousand dollars, to be paid out of the contingent fund.

6. Deaf, Dumb and Blind Institute.

CHAP. 19.—An ACT to provide for the establishment of the Virginia asylum for the education of the deaf and dumb and of the blind.

(Passed March 31, 1838.) 31

1. *Be it enacted by the general assembly,* That there shall be established on a site, at such place as the legislature may by joint resolution select, an institution to be called "The Virginia institution for the education of the deaf and dumb and of the blind," which shall be under the government of seven visitors, to be appointed annually by the president and directors of the literary fund, who shall notify them of their appointment, and prescribe a day for their first meeting, or in the event of failure, for a subsequent one.

2. The said visitors, or a majority, shall appoint from their own body, a president to preside at their meetings, and a secretary to record, attest and preserve their proceedings.

3. In the said institution, there shall be two schools, each separate and distinct from the other in all respects whatsoever. In one of them, such deaf mutes, and in the other, such blind pupils as may be placed in said institution, as hereinafter provided, shall be exclusively educated under so many professors, instructors and assistants as may be deemed necessary and expedient by the board of visitors.

4. The said visitors shall be charged with the erection, preservation and repair of the buildings, the care of the grounds and appurtenances, and of the interests of the institution generally. They shall have power to employ all necessary agents; to appoint and remove professors (two-thirds of the whole number concurring in every case of removal); to fix their compensation; prescribe their duties and the course of education in each school; to establish rules for the government and discipline of the pupils; to regulate tuition fees; to prescribe and control the duties and proceedings of all officers, servants and others, with respect to the buildings, 32
lands, appurtenances and other property and interests of the institution; to draw from the literary fund or the treasury, such moneys as are or shall be charged by law on either for the benefit and support of the institution; and in general, to direct and do all matters and things, which, not being inconsistent with the constitution and laws of the United States or of this state, shall seem to them most expedient for promoting the purposes and fulfilling the objects of said institution; which several functions they shall be free to exercise in the form of by-laws, rules, resolutions, orders, instructions or otherwise, as they shall deem proper.

5. The said visitors shall have such stated and occasional meetings as they shall themselves prescribe. A majority shall constitute a quorum for business, and all vacancies occurring by death, resignation, removal from the commonwealth, or failure to act for the space of six months, shall be supplied by the appointing power.

6. The president and visitors shall be, and they are hereby declared to be a body corporate, under the style and title of "The president and visitors of the Virginia institution for the education of the deaf and dumb and of the blind," with the right, as such, to use a common seal, to plead and be impleaded, in all courts of justice, and in all cases in which the interests of the institution are involved; and they shall be capable in law, and in trust for the institution, of receiving subscriptions and donations, real and personal, as well from bodies corporate, and persons associated, as from private individuals.

7. The institution hereby established, shall in all things, and at all times, be subject to the control of the legislature; and it shall be the duty of the board of visitors annually to make a report to the president and directors of the literary fund, (to be laid before the general assembly,) which shall embrace a full account of receipts and disbursements, the funds on hand, and a general statement of the condition of said institution.

8. There shall be maintained and educated at the public expense, at the institution hereby established, such poor and destitute deaf mutes and blind persons as are unable to pay for such maintenance and education, to be selected in the mode that the board of visitors shall prescribe: *Provided nevertheless,* That such selection shall be made with a due regard to the claims of every portion of the commonwealth. There shall also be educated in both of said schools, such other deaf and dumb and blind persons, whether from Virginia or elsewhere, and whether sent at individual or at state expense, as said board of visitors shall deem it advisable to admit, and upon such terms for their instruction and support as they may prescribe.

9. *Be it further enacted,* That there shall be appropriated out of the revenue of the literary fund which had accumulated prior to the passage of the act appropriating the surplus revenue of the literary fund, passed March the twenty-second, eighteen hundred and thirty-six, so much as shall be necessary, not exceeding twenty thousand dollars, for the purpose of procuring a suitable site or sites, and for erecting thereon the necessary buildings; and the further sum of ten thousand dollars shall be annually applied to the support of said institution: *Provided, however,* That not more than one-half of the first mentioned appropriation shall be expended in one year: *And provided also,* That no portion of the 33
annual endowment shall be paid until the institution goes into

actual operation; and it shall be discretionary with the president and directors of the literary fund, at any time, to withhold any part of said annual endowment, if not required by the wants of the institution.

10. *Be it further enacted,* That when the institution hereby established shall go into operation, the appropriation of the surplus revenue of the literary fund by the act of twenty-second of March, eighteen hundred and thirty-six, shall be limited to the sum of twenty-five thousand dollars; and all excess of such surplus, if any, not exceeding ten thousand dollars, shall be applied in payment of the annuity herein before granted; and if such excess should not amount to ten thousand dollars, the deficiency shall be charged upon the ordinary revenue of the state.

11. This act shall be in force from and after the passing thereof.

CHAP. 14.—An ACT directing the payment of a sum of money to the visitors of the Virginia institution for the education of the deaf and dumb and of the blind.

[Passed March 20, 1841.] 37

1. *Be it enacted by the general assembly,* That the auditor of public accounts be and he is hereby instructed to issue a warrant upon the treasury in favour of the visitors of the Virginia institution for the education of the deaf and dumb and of the blind, for the sum of six thousand two hundred and fifty dollars, being the amount expended by the said visitors in the purchase of furniture, musical instruments, books, apparatus, and other articles required for the outfit of the institution; which amount shall be paid out of any moneys in the treasury not otherwise specifically appropriated: *Provided,* That whenever there shall be any excess of the income arising from the Literary fund, over and above the appropriations 38
heretofore made of said income, such excess shall be paid into the public treasury until the sum herein appropriated shall be reimbursed.

2. *Be it further enacted,* That the auditor of public accounts shall not issue a warrant upon the treasury for the whole or any part of the sum herein appropriated, until a copy of the contract or contracts made by the said visitors for the erection of the necessary buildings as provided in the act establishing said institution, passed March the thirty-first, eighteen hundred and thirty-eight, signed by all the visitors who were present at the board when such contract or contracts were made, and likewise by the contractor or contractors, accompanied by the specifications of said contract or contracts, and

communicated to the president and directors of the Literary fund; and unless it shall appear to the said president and directors that the entire completion of said buildings, including the purchase of a site for the same, will not exceed the sum appropriated for that purpose in the before recited act. And if the said visitors have exceeded or shall exceed the said appropriation, they shall be held bound in their individual character, without any recourse to the commonwealth.

3. This act shall be in force from the passing thereof.

CHAP. 9.—An ACT making appropriation for the completion of the buildings of the deaf and dumb and blind institution.

[Passed January 23, 1845.] 13

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and he is hereby authorized and directed to issue his warrants on the treasury in favour of the president and visitors of the Virginia institution for the education of the deaf and dumb and of the blind, for the sum of twenty-five thousand dollars, to be applied in completing the buildings of the said institution: *Provided*, That the said sum shall be paid in six equal semi-annual instalments: that is to say, four thousand one hundred and sixty-six dollars sixty-six cents within six months after the passage of this act, and the same sum within each of five successive periods of six months after the expiration of the first six months aforesaid: *Provided further*, That the aforesaid appropriation shall be so expended as fully to complete the said buildings in such mode and style as such appropriation would warrant.

2. This act shall be in force from the passing thereof.

CHAP. 18.—An ACT appropriating a sum of money to provide furniture for the institution of the deaf and dumb and of the blind.

[Passed February 24, 1846.] 20

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and is hereby authorized and directed to issue his warrant on the treasury, in favour of the "president and visitors of the Virginia institute for the education of the deaf and dumb and of the blind," for the sum of five thousand dollars, to be expended in

providing the necessary furniture and fixtures for the buildings of the said institution: *Provided*, That two thousand five hundred dollars of this appropriation may be paid by the auditor immediately after the passage of this act, and the remainder in one year from the time of the first payment.

2. This act shall be in force from the passing thereof.

CHAP. 272.—An ACT authorizing the payment of a certain sum of money to William C. Adams.

[Passed March 20, 1847.] 230

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and he is hereby authorized and required to issue his warrant upon the treasury (payable out of any money therein not otherwise appropriated) in favour of William C. Adams, or his legal representative, for the sum of five thousand nine hundred and ninety-eight dollars and ninety-eight cents, it being an allowance made to the said Adams on account of work done, materials furnished, and expenses incurred in the erection of the buildings of the deaf and dumb and blind institution near Staunton.

2. *Be it further enacted*, That the said auditor of public accounts shall be and he is hereby authorized and directed to retain and withhold out of the semi-annual instalment to fall due on the twenty-third day of January, eighteen hundred and forty-eight, by virtue of an act, entitled "An act making appropriation for the completion of the buildings of the deaf and dumb and blind institution," passed the twenty-third day of January, eighteen hundred and forty-five, the sum of three thousand six hundred and seventy-eight dollars, which said sum is to be deducted from the appropriation of the twenty-third of January, eighteen hundred and forty-five, aforesaid, and the balance to be applied as prescribed by the said act.

3. This act shall be in force from its passage.

CHAP. 15.—An ACT to increase the annuity to the Virginia institution for the education of the deaf and dumb and of the blind, and for other purposes.

[Passed March 16, 1847.] 16

1. *Be it enacted by the general assembly*, That from and after the passage of this act the annuity of the Virginia institution for the

education of the deaf and dumb and of the blind, shall be increased to the sum of fifteen thousand dollars.

2. *Be it further enacted,* That hereafter the surplus of the Literary fund, if any, above the sum of twenty-five thousand dollars set apart by the acts of the twenty-second day of March eighteen hundred and thirty-six, and of the thirty-first day of March eighteen hundred and thirty-eight, not exceeding fifteen thousand dollars, shall be applied in payment of said annuity to said Virginia institution; and if such excess should not amount to fifteen thousand dollars, the deficiency shall, as heretofore, be paid out of any money in the treasury not otherwise appropriated: *Provided, however,* That the sum of five thousand dollars, a part of said annuity, shall exclusively be paid out of the treasury of the commonwealth.

3. *Be it further enacted,* That the president and visitors of said Virginia institution be, and they are hereby authorized, to expend the sum of two thousand dollars in the purchase of twenty acres of land adjoining and lying south of the present institution lot; and the further sum of one thousand dollars in the purchase of such raised and common types, moulds and other printing apparatus, as may be required, as well in the deaf mute as in the blind department of said institution; and the further sum of two thousand three hundred dollars in the purchase of materials, machines and tools, for the various workshops of said institution, and for the completion of said workshops.

4. *Be it further enacted,* That in case of the passage of acts before the passage of this act appropriating more than the probable balance in the treasury on the thirtieth of September eighteen hundred and forty-seven, as estimated and reported by the auditor of public accounts, the president and visitors of said Virginia institution are hereby authorized to borrow, for a period not exceeding twelve months, and at a rate of interest not exceeding six per centum per annum, the sum of five thousand dollars, to be applied for the present year in aid of the annuity of ten thousand dollars already established by law, for the support of said Virginia institution; and the further sum of five thousand three hundred dollars, to be applied to the purposes specified in the third section of this act if so much shall be necessary; the sum so borrowed by said president and visitors, to be paid out of the revenue of the commonwealth for the year eighteen hundred and forty-eight.

5. *Be it further enacted,* That the property of said Virginia institution, whether real or personal, including servants hired for the use of said institution, shall hereafter be exempted from taxation under the revenue laws of the commonwealth, and from county and parish levies; and that the officers, attendants and servants of said Virginia institution, shall not in future be required to serve on

juries, to work on the public highways, or to perform military duty, except in case of actual invasion of the commonwealth.

6. *Be it further enacted,* That hereafter the fiscal year of said Virginia institution shall terminate with the calendar year; and the president and visitors shall hereafter cause their annual accounts to be closed on the thirty-first of December in each year, and shall as soon thereafter as practicable make the annual report required by law.

7. *Be it further enacted,* That in consideration of the appropriation herein contained for printing materials and apparatus for said institution, the president and visitors of said Virginia institution shall cause to be printed for the use of the general assembly, at least three hundred and fifty copies of their annual reports, and at least three hundred and fifty copies of the annual reports of the president and directors of the Western lunatic asylum at Staunton, without charge to the commonwealth, except for paper and ink.

8. This act shall be in force from its passage.

CHAP. 12— An ACT to provide additional accommodations for the deaf and dumb and blind institution.

[Passed January 25, 1849.]

1. *Be it enacted by the general assembly,* That the auditor of public accounts is hereby directed to draw his warrants on the treasury, payable out of any money therein not otherwise appropriated, in favour of the president and visitors of the Virginia institution for the education of the deaf and dumb and blind, for such sum or sums as may be from time to time required by the said president and visitors, not exceeding in the aggregate four thousand dollars; which amount, or so much as may be necessary, the said president and visitors are hereby directed to apply to the erection of a plain, substantial brick building, of sufficient size to contain a laundry and bakehouse for the said institution, together with convenient accommodations for the servants employed therein.

2. This act shall be in force from its passage.

CHAP. 1—An ACT appropriating the public revenue.

[Passed March 14, 1850.]

* * * to pay for the furniture purchased for the increased number of pupils received in the institution for the education of

the deaf and dumb and of the blind, under the act of March the sixteenth, eighteen hundred and forty-seven, and for arrears in support account of same institution, the sum of six thousand dollars; * * *

CHAP. 2.—An ACT appropriating the public revenue, and for other purposes.

[Passed March 7, 1851.] 4

* * * for completing the buildings of the institution for the deaf and dumb and blind, two thousand five hundred dollars. * * *

CHAP. 35.—An ACT appropriating two thousand dollars to purchase a library and philosophical apparatus and organ for the institution of the deaf and dumb and of the blind.

Passed June 5, 1852. 29

1. *Be it enacted by the general assembly*, That the sum of two thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of purchasing a library, philosophical apparatus and an organ for the Virginia institution for the education of the deaf and dumb and the blind; and that the same be paid, upon the warrant of the auditor of public accounts, to the president and visitors of said institution.

2. This act shall be in force from its passage.

CHAP. 145.—An ACT increasing the annuity of the institution for the education of the deaf and dumb and the blind, by the addition thereto of five thousand dollars, and appropriating twenty thousand dollars to erect a building at said institution, and to warm and light the same with steam and gas.

Passed February 24, 1853. 126

1. Be it enacted by the general assembly, that the annuity of the institution for the education of the deaf and dumb and the blind be and the same is hereby increased by the addition thereto of the sum

of five thousand dollars; which shall be paid in the manner prescribed by law in respect to the existing annuity of said institution.

2. The sum of twenty thousand dollars is hereby appropriated out of the treasury, to be paid on the orders of the visitors of the said institution; seven thousand dollars, part thereof, to be applied by said visitors to the construction of fixtures for warming the buildings of said institution with steam; five thousand dollars, another part thereof, to be applied to the construction of apparatus for lighting said buildings with gas; and eight thousand dollars, the residue thereof, to the erection of an additional building at said institution; one-half of said aggregate sum of twenty thousand dollars to be paid during the present fiscal year, and the remaining half of said sum to be paid during the next ensuing fiscal year.

3. This act shall be in force from its passage.

CHAP. 41.—An ACT appropriating ten thousand dollars for the purpose of supplying the Institution for the deaf and dumb and the blind with water.

Passed March 4, 1854. 30

1. Be it enacted by the general assembly, that the sum of ten thousand dollars be and is hereby appropriated for the purpose of enabling the board of visitors of the Institution for the deaf and dumb and the blind to provide said institution with an adequate and permanent supply of water, and that the same be paid on the orders of said board.

* * * * *

CHAP. 93.—An ACT making an appropriation to the deaf and dumb and the blind institution at Staunton.

[Passed March 13, 1856.] 80

1. Be it enacted by the general assembly, that there be and there is hereby appropriated out of the treasury of the commonwealth the sum of twelve thousand and eighty dollars and six cents, to be paid on the order of the board of visitors of the institution for the deaf and dumb and the blind, of which five thousand five hundred and eighty dollars and six cents shall be paid during the present, and the residue thereof during the next fiscal year, and to be applied by said board as follows: Three thousand dollars, part thereof,

in the purchase of an additional boiler and the erection of a suitable boiler-house, to complete the heating of the buildings of the said institution by steam; two thousand seven hundred and thirty-nine dollars and six cents, another part thereof, to meet the deficiency which has occurred in the support fund of the said institution during the two last fiscal years; one thousand dollars, another part thereof, in the purchase of a fire engine and the erection of an engine-house; fifteen hundred dollars, another part thereof, in addition to the sum already appropriated by a former act for the purchase of an organ; one thousand dollars, another part thereof, in fencing the grounds of said institution; and two thousand eight hundred and forty-one dollars, the residue thereof, to supply the deficiency on account of the chapel, steam and gas fund of the said institution.

2. This act shall be in force from the passage thereof.

CHAP. 12.—An ACT making an Appropriation to the Deaf and Dumb and Blind Institution.

Passed January 10, 1860. 106

1. Be it enacted by the general assembly, that the annuity of the Institution for the deaf and dumb and the blind be and the same is hereby increased, by the addition thereto of the sum of five thousand dollars; which shall be paid in the manner prescribed by law in respect to the existing annuity of said institution.

2. The sum of seven thousand dollars is hereby further appropriated out of the treasury, to be paid on the orders of the visitors of said institution; and to be applied by them to pay for the erection of a shop building at said institution, and to warm and light the same with steam and gas. 107

3. This act shall be in force from its passage.

International Exchanges.

No 1.—Preamble and resolutions relative to a national interchange of productions of art, science, industry and natural history. —[*Adopted March* 23, 1848.] 353

Whereas the legislature of Virginia regards with interests the noble design of a national interchange of productions of art, science, industry and natural history, projected by Mons. Alexandre Vatte-

mare, and patronized with such munificence by the French government, and is desirious of contributing to a work so important:

1. *Resolved by the general assembly,* That the spirit which has conceived this design is an admirable as the disinterested enthusiasm which has achieved it; and that this legislature, as a testimonial of its appreciation of the character and services of its distinguished author, hereby invite him to visit the halls of legislature during the session of the legislature, and hereby tender to him the appointment of agent of the state of Virginia, for conducting the exchange of such subjects as may be presented by Virginia to France.

2. *Resolved,* That the legislature has learned with gratitude that France, of whose prosperity we always hear with pleasure, and in whose misfortunes we always sympathize, has presented to Virginia, literary works of a rare, useful and costly character, for which it is incumbent to make some return even if inadequate.

3. *Resolved,* That the state librarian be instructed to forward to the agent of international exchanges such copies of the code and of the law reporters, of the journals and other legislative documents, or other works as may be spared without detriment to the library; he shall forward such reports of the moral, social and political statistics of Virginia as may tend to diffuse amongst other nations a correct knowledge of her institutions, her condition and her capacities; that he shall likewise forward any private donations intended for the department of international exchanges; and that he be required to report annually to the joint committee of the library.

Printing Treasury Notes.

CHAP. 11.—An ACT to authorize the issue of treasury notes.

Passed March 18, 1856. 18

1. Be it enacted by the general assembly, that the governor be and he is hereby authorized to cause to be prepared and signed, in order to borrow money thereon from time to time, as hereinafter provided, treasury notes for such sum or sums as he may be advised by the auditor of public accounts that the exigencies of the government require for purposes other than works of internal improvement: provided, that the amount of such notes outstanding shall not at any time exceed the limit hereinafter named.

2. The said treasury notes shall be made payable to the order of the person or persons to whom they are given in evidence of money borrowed, and shall also be payable at the treasury of the commonwealth not more than one year after their respective dates. From

which dates, until the dates at which they are severally payable and no longer, they shall bear such interest as shall be expressed on the face of the said notes. Which rate of interest upon each several issue of the said notes shall be fixed by the governor, with the advice of the auditor of public accounts; but shall in no case exceed the rate of six per centum per annum. The said notes shall be redeemed and paid at the treasury to the holders respectively, upon the warrant of the auditor of public accounts; and the said redemption and payment shall include the principal of each note, and the interest which may be due thereon at the time of payment. For this payment and redemption, at the times and place herein specified, the faith of the commonwealth of Virginia is hereby solemnly pledged.

* * * * *

9. The said treasury notes shall be prepared under the direction of the governor, and shall be signed, on the part of the commonwealth, by the treasurer, and countersigned by the auditor of public accounts, from time to time, as they are delivered to the parties from whom money is borrowed, and to whose order they are made payable. And those officers respectively shall, as checks upon each other, and to secure the public safety, keep separate, full and accurate accounts of the number, date, denomination and amount of all the notes signed and countersigned by them respectively, and of the names of the persons to whose order the said notes are severally made payable. Which said amounts shall be carefully preserved and kept on file in their respective offices, and also similar accounts kept and preserved in the same manner of all the said notes redeemed, as the same shall be returned and canceled. The auditor of public accounts shall further account monthly for all notes delivered to him by the treasurer, to be countersigned for delivery. The said auditor is authorized, with the consent of the governor, to employ such additional temporary clerks as the duties enjoined on him hereby may render necessary: provided, that the expense of such clerks shall not exceed, in the aggregate, nine hundred dollars per annum. 19

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12. A sum not exceeding five hundred dollars, to be paid out of any money in the treasury not otherwise appropriated, is hereby appropriated annually for three years, for defraying the expense of preparing, printing, engraving and signing the treasury notes hereby authorized, and other expenses incident thereto. The plate or plates for such engraving shall be carefully preserved, as the governor may direct, and shall be destroyed when the issue of the said notes shall cease.

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[CODE OF VIRGINIA, 1849.]

Interest On Public Debt.

CHAPTER XLIV.

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PUBLIC DEBT.

Of certificates of debt.

§ 1. If any of the old state certificates, which, by an act passed the nineteenth of January eighteen hundred and twenty-five, were required to be presented for redemption before the first day of September following, shall hereafter be produced, payment shall be made of the principal sum appearing due by such certificate, and interest thereon at the rate of six per centum per annum, to the day last mentioned. 1824-5, p. 29.

§ 2. Upon the new certificate for twenty-four thousand and thirty-nine dollars and seventeen cents, issued in lieu of the certificates mentioned in the said act, as held by the president and directors of the literary fund, interest shall continue to be paid annually at 231 the rate of six per centum per annum. Id.

§ 3. Upon the certificate for three hundred and nineteen thousand dollars, which, under an act passed the twenty-fourth of February eighteen hundred and thirty-two, was issued in favor of the said president and directors in lieu of three hundred and nineteen certificates for a thousand dollars each, purchased by them under an act passed the twenty-fourth of February eighteen hundred and sixteen, interest shall continue to be paid semi-annually on the first day of January and July, at the rate of seven per centum per annum, according to the act of the first day of February eighteen hundred and fourteen, under which the said money was borrowed. 1831-2, p. 12. 1815-16, p. 2, § 6. 1813-14, p. 27.

§ 4. Upon the certificates issued under the act passed the twentieth of February eighteen hundred and thirty-three, authorizing a subscription to the stock of the *Chesapeake* and *Ohio* canal company, amounting to two hundred and fifty thousand dollars, interest shall continue to be paid quarterly, at the rate of five per centum per annum. 1832-3, p. 97.

§ 5. Upon the certificates issued under the act passed the ninth of March eighteen hundred and thirty-nine, providing for subscriptions to the Exchange Bank, and Northwestern Bank of Virginia, amounting together to four hundred and fifty thousand one hundred and seven dollars, interest shall continue to be paid semi-annually, at the rate of six per centum per annum, according to the said act. 1839, p. 8

§ 6. The certificates before mentioned shall continue registered in the office in which the same are registered now, and all payments on account thereof shall be made upon the warrant of the first auditor.

p. 24, ch. 12. § 7. The certificates of debt now registered in the second auditor's office shall continue registered therein. All certificates for money borrowed hereafter by the board of public works shall be registered in the same office. In the book containing such registry, reference shall be made to the special act authorizing the loan.

§ 8. Every such certificate shall be signed by the treasurer and countersigned by the second auditor. All payments on account thereof shall be made upon the warrants of the second auditor.

CHAP. 97.—An ACT authorizing a subscription by the state of Virginia to the stock of the Chesapeake and Ohio canal company.

(Passed February 20th, 1833.)

1. *Be it enacted by the general assembly of Virginia,* That the treasurer of the commonwealth be, and he is hereby authorized and directed to subscribe, in the name and for the use of the commonwealth of Virginia, for two thousand five hundred shares of the capital stock of the Chesapeake and Ohio canal company, and to pay for the same in manner following, that is to say: the said treasurer is further authorized and directed to issue, in the name of the commonwealth, certificates of stock of the state, in sums of one hundred dollars each, bearing interest from the date thereof, at the rate of five per cent. per annum, payable quarterly, the principal sum whereof shall be irredeemable prior to the year one thousand eight hundred and fifty, to the amount of the par value of the said two thousand five hundred shares of canal stock; of which certificates he shall deliver to the treasurer or other proper officer or agent of the said company, on the first day of May next, or as soon thereafter as practicable, a sum equivalent, at their par value, 60 to that which the state of Maryland shall have on that day paid, or have been called upon to pay, on account of the like subscription of the said state to the capital stock of the said company, and the residue of the said certificates, the said treasurer shall, in like manner, pay over to the treasurer or other proper agent of the said company, as the other holders of the stock thereof shall be required to pay the several remaining instalments upon the stock subscribed by them respectively to the capital of the said company, until the whole amount thereof be issued and paid: *Provided,* That prior to the first day of May, one thousand eight hundred and thirty-three, the president and directors of the said company shall certify to the said treasurer, their agreement, under the corporate seal of the said company, to accept and receive in payment as aforesaid, the said certificates of the stock of the state, at par value, in satisfaction

of the subscription authorized and directed as aforesaid: *And provided, moreover,* That the said president and directors shall agree to appropriate a sum not exceeding in amount eighty thousand dollars, towards the construction of suitable locks to enable the river boats to reach the canal, and to return from it to the river again, at or near each of the following points on the river Potomac, to wit: the mouth of Goose creek and the base of the Ketocton mountain, in the county of Loudoun, the ferry across the Potomac at Shepherdstown, in the county of Jefferson, and the ferry across the same river at Light's, or at the mouth of the Opequon, in the county of Berkeley, and to cause the said locks to be constructed by the first of November, one thousand eight hundred and thirty-five, and sooner if practicable.

2. *Be it further enacted,* That the treasurer be, and he hereby is authorized and required, if the certificates directed by this act to be delivered to the treasurer or other proper agent of the Chesapeake and Ohio canal company, can be sold at a premium, or above their par value, to sell the same for the best price to be had, after advertising the time and place of sale for six weeks, in such newspapers as he may think expedient, and pay to the treasurer or other proper officer of said company, so much money as may be due and payable on account of the subscription of the state to the stock of said company, according to the provisions of this act; and pay the balance into the treasury to the credit of the fund for internal improvement.

3. This act shall commence and be in force from the passing thereof.

CHAP. 97.—An ACT to provide for the appointment of a proxy to represent the state in the Chesapeake and Ohio canal company, and for other purposes.

(Passed March 8, 1834.) 110

1. *Be it enacted by the general assembly,* That the stock held by the state in the Chesapeake and Ohio canal company, under the provisions of an act passed the twentieth of February, eighteen hundred and thirty-three, entitled, "an act authorizing a subscription by the state of Virginia to the stock of the Chesapeake and Ohio canal company," together with the dividends and other income which shall hereafter accrue thereon, shall be, and they are hereby transferred to, and vested in the president and directors of the board of public works, as a part of the fund for internal improvement: *Provided, however,* That the said stock, its dividends and other in-

come, shall be subject to such future disposition as may by law be directed for the payment of the interest and redemption of the principal of the sums borrowed under the act aforesaid.

2. *Be it further enacted,* That the appointment of proxy to represent the state in all meetings of the stockholders of the Chesapeake and Ohio canal company, shall henceforth be made by the board of public works, until otherwise provided by law. And it shall be the duty of the said proxy, if in his power, to cause to be transmitted to the said board copies of the annual and other reports of the president and directors of said company, the proceedings of the stockholders, and other interesting documents relating to the said improvement.

CHAP. 12.—An ACT providing for the negotiation of loans for purposes of internal improvement.

(Passed April 9, 1838.) 24

1. *Be it enacted by the general assembly,* That all loans hereafter authorized by law for the payment of subscriptions on behalf of the commonwealth to the capital of joint stock companies incorporated for purposes of internal improvement, or for defraying the expense of any work of internal improvement in which the state is or may be interested, as well as all such loans heretofore authorized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specially provided by the acts authorizing the loans.

2. The board of public works, in effecting such loans, shall borrow upon the credit of the commonwealth, at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the money so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof, purporting that the commonwealth of Virginia owes to the lender, his heirs, executors, administrators and assigns, the principal sum so borrowed, together with the interest at the rate agreed on, that the interest is payable semi-annually at the treasury of the commonwealth, and that such certificate or certificates were issued under authority of the special act authorizing such loans. Each certificate shall be signed by the treasurer, and countersigned by the second auditor, and be registered in a book to be kept for that purpose by the second auditor, and shall be transferrable on the books of his office in person or by attorney. The semi-annual interest on such certi-

ficate shall be paid on his warrant, and upon the transfer of the whole or any part thereof, shall be delivered up and cancelled, and a new certificate or certificates equal to its whole amount, shall be issued and registered in manner aforesaid. All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the general assembly.

3. For the payment of the interest, and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other nett income which may accrue therefrom to the commonwealth, or to the fund for internal improvement, shall be, and the same are hereby appropriated and pledged; and in like manner the nett income and other profits which may so accrue from works in which the state is interested, other than those of joint stock companies, and on which the money borrowed is to be expended, shall be and the same are likewise hereby appropriated and pledged for the payment of the interest and redemption of the principal of the money so borrowed: and if the stock aforesaid and the said dividends, nett profits and other income shall be inadequate to the payment of the said semi-annual interest, and the final redemption of the principal, of the respective loans, the general assembly pledges itself to provide other and sufficient funds, and for that purpose to levy, if necessary, an adequate tax upon any or all subjects liable to taxation under the constitution. Until such other sufficient funds shall be provided, so much of the income of the fund for internal improvement, not otherwise specially appropriated, as may be necessary to supply the deficiency, is hereby pledged for such purpose; and if at any time the dividends and other income arising from the stock or work as aforesaid, together with the income of the fund for internal improvement, shall be insufficient to pay the interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the board of public works, issue his warrant upon the treasury, directing the payment of such interest out of any moneys therein not otherwise appropriated. And in case of the inability of the treasury at any time to discharge such warrants, the board of public works shall be and they are hereby authorized to borrow the necessary amount from the banks of this state, at a rate of interest not exceeding six per centum per annum, on the credit of the commonwealth, to be repaid in such manner as the general assembly may by law direct.

4. The surplus dividends and other income arising from any stock or work as aforesaid, and remaining after the payment of the interest due upon the certificates issued for loans applied to such stock or work, shall from time to time be applied by the board of

public works to the purchase of such certificates, if to be procured on satisfactory terms; and if not, then of any other certificates of state debt, or any other public debt or other stock which can be so purchased, which shall be held as a fund for the payment of the interest and redemption of the principal of the loans obtained for the payment of such stock or such work, and the interest accruing therefrom shall also from time to time be invested and held in like manner: and the said certificates of debt so purchased, together with the stock pledged, shall be disposed of in such manner as the general assembly may direct: *Provided,* That the certificates so purchased on account of any particular loan, or such part thereof as may be necessary, shall from time to time be sold by the board of public works to reimburse the fund for internal improvement for all payments of interest made out of the income for that fund on account of such loan, by virtue of this act.

5. The board of public works shall be and they are hereby fully authorized and empowered to procure any or all of the loans authorized by law, either in the United States or in Europe, as they may deem most advantageous to the public interest, and for that purpose to appoint, if they see fit, one or more agents, with the necessary powers, and to allow him or them such compensation as they may deem reasonable. In the event of a loan or loans being effected in Europe, the said board may provide for the payment of the interest on the same semi-annually, in London or elsewhere, and may stipulate for the payment by the lenders of the amount of such loans in England or elsewhere, conforming the certificates to be issued to the terms of the loans. They shall also be empowered generally to do and execute all such acts and writings as may be necessary to complete the said loans, and to cause the prompt payment of the amount thereof into the public treasury.

6. *Be it further enacted,* That the person or persons, body or 26
bodies politic or corporate, in whose names any of the certificates of the public debt of this commonwealth shall be issued, in conformity to the provisions of this act, shall be deemed as to the commonwealth the owner of the said stock until a transfer shall be duly made on the books of the second auditor, or other proper officer, to some other person or body politic or corporate. And if the person or body politic or corporate, in whose name the said certificate shall stand, shall for valuable consideration, and *bona fide*, sell and deliver the said stock to any other person, body politic or corporate, accompanied by a power of attorney duly executed and authenticated, such sale and delivery shall vest in the transferree all the title of the transferrer, either in law or equity, to the said certificate: and upon the application of the attorney, and delivery of the certificate of debt therein assigned to the second auditor, or other proper officer of the commonwealth, it shall be his duty to

transfer the same, and issue a new certificate or certificates therefor in the name of the transferree: *Provided, however,* That all payments made by the commonwealth prior to such transfer, on account of the interest on such certificate, shall discharge the commonwealth from all claim on account of the interest so paid.

7. If any person, in whose name the said stock shall stand on the books of the commonwealth, shall die without having made a sale or transfer thereof, and his executor or administrator shall produce to the second auditor, or other proper officer, the original certificate or certificates of the said stock, and duly authenticated evidence that he is, by the laws of the country in which such holder may have died, the lawful executor or administrator of such holder, the second auditor shall, on his application in person, or by power of attorney duly authenticated, transfer the said stock to the said executor or administrator, or to such person as he may direct.

8. Whenever any certificate of stock created in pursuance of the provisions of this act, or by authority of any previous act, for purposes of internal improvement, shall have been lost by the holder or holders thereof, it shall and may be lawful for the second auditor and treasurer to renew the same in the manner mentioned in this act: *Provided, however,* That such certificate shall not be renewed until the party applying for the same shall produce satisfactory proof of his having advertised the same for at least three months previously to his application; shall execute a bond with sufficient security, to the treasurer and his successors, conditioned to indemnify the commonwealth against any loss in consequence of the renewal of such certificate, and shall moreover file an affidavit, setting forth the time, place and circumstances of the loss aforesaid.

9. It shall be lawful for any bank incorporated in this commonwealth, through its proper officers, and by the authority, and under the direction of the said board, to act as the agent of the board of public works in negotiating, obtaining or contracting for any loan which may be so authorized, and to do all necessary acts for the transfer of the proceeds of such loan into the public treasury, in specie or other satisfactory funds, by bills of exchange or otherwise, and to make on behalf of the said board the necessary arrangements for the punctual and regular payment of the interest on such loan, according to the terms of the contract therefor.

10. And whereas, should large sums be borrowed, of which a considerable part would necessarily lie idle until required for the purposes for which the loans may be respectively designed, whereby a great loss of interest would be incurred, the board of public works may deposite the same with the banks of this commonwealth, at such rate of interest as may be agreed upon by the board and said banks. The said board may also lend such part thereof to joint stock companies, as the said companies may be entitled by law

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to receive from them at subsequent periods, on such conditions and security as the board may deem expedient.

11. This act shall be in force from its passage.

CHAP. 86.—AN ACT to provide for further subscriptions on the part of the state to the Exchange bank and Northwestern bank of Virginia.

(Passed March 19, 1839.) 52

1. *Be it enacted by the general assembly,* That the treasurer of this commonwealth shall be, and he is hereby required to subscribe for four thousand five hundred shares of stock in the Exchange bank of Virginia on behalf of the commonwealth, and shall pay up, at par value, the entire amount of so many shares so subscribed for, as shall be equal in number to the shares fully paid up by subscribers other than the state, and shall also pay on the residue of the additional shares so subscribed for by him, as much as may, from time to time, be paid on a like number of shares by individuals other than the state, not exceeding, however, one hundred dollars per share; and for the purpose of paying such subscription, it shall be lawful for the treasurer, from time to time, to borrow upon the credit of the state, the amount required upon each payment so to be made, and to issue a certificate or certificates of loan to the lender for the amounts so borrowed, stating therein that the commonwealth owes the principal sums specified in such certificate or certificates with legal interest payable at the treasury semi-annually, and redeemable after twenty years, in whole or in part, at the pleasure of the commonwealth. Such certificates shall be made and signed by the treasurer of the commonwealth, and countersigned by the auditor of public accounts, and shall be transferrable in his office in the manner prescribed by law, for the transfer of certificates of loan issued for the purposes of internal im- 53
provement. And the general assembly hereby pledges itself to provide adequate funds for the redemption of the principal sums hereby authorized to be borrowed, and for the payment of the interest accruing thereon, at the time it shall become due: *Provided,* That the commonwealth shall receive upon the stock which may be hereafter subscribed in its name, such proportion of the dividends afterwards declared, as the period of time between the subscription and the making of the dividends, shall bear to the term of six months.

2. *Be it further enacted,* That to enable the treasurer of the

commonwealth to pay up the state's subscription to the Northwestern bank of Virginia, heretofore made, he is hereby authorized to borrow upon the credit of the state, the amount required to complete the same, and to issue a certificate or certificates of loan to the lender for the amount so borrowed, stating therein that the commonwealth owes the principal sums specified in such certificate or certificates, with legal interest, payable at the treasury of the commonwealth and redeemable after twenty years, in whole or in part, at the pleasure of the commonwealth; such certificate shall be made and signed, countersigned and transferrable in the same manner, and upon the same terms and conditions in all respects, as is herein provided for the payment of the additional stock to the Exchange bank of Virginia; and the general assembly doth hereby pledge itself to provide adequate funds for the redemption of the principal sums authorized to be borrowed by this section, and for the payment of the interest accruing thereon, at the time it shall become due.

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[CODE OF VIRGINIA, 1860.]

CHAPTER XLIV.

PUBLIC DEBT.

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Sinking fund.

1. There shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the commonwealth the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that being seven per centum on eleven millions nine hundred and seventy-one thousand eight hundred and thirty-eight dollars thirty cents, the ascertained debt of the commonwealth on the first day of January 1852. The sum so set apart shall be called "the sinking fund," and shall be applied as follows: So much of said fund as arises from the seven per centum on the debt existing on the first day of January eighteen hundred and fifty-two, together with the proceeds of the sales of bank stocks, shall be applied to the redemption of such part of said debt as may be redeemable; and if no part thereof be redeemable, the said residue shall then be devoted to the pur- 260
chase at their market value, and cancellation of any outstanding bonds or certificates of said debt: and so much of said fund as arises from one per centum on the debt created since the first

1852-3, p. 2, c. 17, § 1.
1855-6, p. 2, c. 14, § 1, 2.
1857-8, p. 5, c. 9, § 1, 2.

day of January eighteen hundred and fifty-two, shall be invested in the outstanding bonds or certificates of the said debt, at their market value, and held by said commissioners for the benefit of said fund. But if no bonds or certificates of either issue can be purchased with fund applicable thereto, the same shall be invested in the stocks or bonds of other states, or of the United States, as shall be deemed most advantageous by the said commissioners. In purchasing such bonds or certificates of debt, those which are redeemable at any early date shall be bought in preference to those which are redeemable at a later date: provided they can be bought at the same price.

55-6, p. 22, 15, § 4. 57-8, p. 10, c. 11.

Future debts provided for.

2. Whenever after the said first day of January eighteen hundred and fifty-two, a debt shall be contracted by the commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per centum the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner herein before directed.

2-3, p. 29, 7, § 2.

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Redemption of debt prior to 1852; interest, how and when paid.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt herein after required to be furnished him by the second auditor, to pay into the treasury of the commonwealth, on or before the first day of January eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the state debt existing on the first of January eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of the said fund, on or before the first day of January eighteen hundred and fifty-three, and first day of July eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semiannual interest on said debt which shall be due and payable at each respective date.

§ 4.

Subsequent debts provided for.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the state, to the credit of the sinking fund, one per centum on the aggregate amount 261

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of debt contracted by the state between the first day of January eighteen hundred and fifty-two and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of debt which shall be contracted in each or any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the said fund, on or before the first day of January and first day of July eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semiannual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided, however, that the amount of the interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semiannual periods on which it shall be come due.

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Treasurer's duty.

15. The treasurer shall receive and pay the moneys be- 262 1852-3, p. 3
longing to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

Transfers of evidences of debts between auditors.

16. In order to collect in one office the accounts of the debt of the commonwealth and the transactions of all business connected therewith, it is hereby provided that the existing certificates of debt of the state, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt 263 created by authority of an act to provide for the further subscriptions on the part of the state to the Exchange Bank and Northwestern Bank of Virginia, passed March the nineteenth, eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semiannual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on the auditor of public

Id. § 16. See Acts 18 p. 52.

accounts, as well as any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor: provided, that the amount of the semiannual installment of interest of the first of July eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided.

Interest on revolutionary debt paid.

§ 17. 17. The accruing interest on the six per centum revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per centum war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the literary fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

Interest on internal improvement debt.

§ 18. 18. The semiannual installment of interest payable the first day of July eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury; and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

p. 32, § 19. 19. The semiannual interest becoming due at the same time, on that part of the state debt of eighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor: provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

CONSTITUTION OF VIRGINIA.

(Adopted August 1st, 1851.) 34

ARTICLE IV.

* * * * *

Taxation and Finance.

29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent, of the state debt existing 47
on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the Sinking fund, and shall be applied to the payment of the interest of the state debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent, the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The general assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion.

CHAP. 17.—An ACT establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.

Passed March 26, 1853. 29

1. Be it enacted by the general assembly, that there shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the commonwealth, the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that sum being seven per centum on eleven million nine hundred and seventy-one thousand eight hundred and thirty-eight dollars

thirty cents, the ascertained debt of the commonwealth on the first day of January one thousand eight hundred and fifty-two. The sum so set apart shall be called the "Sinking Fund," and shall be applied to the payment of the interest on the state debt and the principal of such part as may be redeemable; and if no part of said debt be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of the commonwealth, or of the United States, or of some of the states of the Union, and applied to the payment of said debt as it shall become redeemable.

2. Whenever after the said first day of January eighteen hundred and fifty-two, a debt shall be contracted by the commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed.

3. If at any time the legislature shall direct a sale of the stocks held by the commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than is herein directed, except in time of war, insurrection and invasion.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt hereinafter required to be furnished him by the second auditor, to pay into the treasury of the commonwealth, on or before the first day of January eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the state debt existing on the first of January eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of the said, fund, on or before the first day of January eighteen hundred and fifty-three, and first day of July eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semi-annual interest on said debt which shall be due and payable at each respective date.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the state, to the credit of the sinking fund, one per centum on the aggregate amount of debt contracted by the state between the first day of January eighteen hundred and fifty-two and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of debt which shall be contracted in each or

any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the said fund, on or before the first day of January and first day of July eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semi-annual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided however, that the amount of the interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semi-annual periods on which it shall become due.

6. For the purpose of managing, preserving and applying the sinking fund created by this act, the auditor of public accounts, register and secretary of the commonwealth, for the time being, are hereby constituted a corporate body under the style of "The Commissioners of the Sinking Fund."

7. It shall be their duty to apply the moneys appropriated out of the said fund to the payment of the interest and redemption of the principal of the state debt at the respective periods prescribed in the fourth and fifth sections of this act for the payment of the sinking fund into the treasury by the auditor of public accounts, and to invest any part of the appropriations for the latter purpose, which cannot be so applied to the purchase of public stock, agreeably to the provisions of the second and third sections of this act.

8. The said commissioners, at their discretion, may apply that part of the sinking fund set apart for the redemption of the principal of the debt, to the payment in the first place of such bonds and certificates as the state is bound to redeem at fixed periods, provided such bonds and certificates shall be redeemable by the state before the arrival of such fixed periods.

9. All the certificates of debt which shall be redeemed under this act, shall be canceled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office.

10. At each period for the payment of the installment of interest and the redemption of any part of the principal of the debt, the said commissioners shall, by a special order entered on the minutes of their proceedings, authorize the second auditor to issue his warrants on the treasury, from time to time, to the persons entitled thereto, in the same manner as they have heretofore been paid in his office.

11. They shall cause to be published in the Enquirer and Whig of the city of Richmond, and in the Union and National Intelligencer of Washington city, a list of the bonds or certificates intended to be redeemed from time to time, at least three months previously to the time fixed upon by them for that purpose, showing the date, number and amount of each, and calling for the surrender thereof on or before a specified day, and stating that the interest thereon will cease on and after that day.

12. Any two of said commissioners may form a board for the transaction of business. They may appoint a secretary, and shall keep a correct journal of their proceedings, of which they shall make 31
a report to each regular session of the legislature. They shall hold their meetings in the second auditor's office, in which their books and papers shall be deposited for safe keeping.

13. It shall be the duty of the second auditor to prepare the necessary statements, showing the amount of the semi-annual interest payable on the public debt at each successive period, and the amount of the principal of the debt proposed to be redeemed at each or either of them, and to furnish the same to the commissioners of the sinking fund, by whom they shall, if approved, be certified to the auditor of public accounts for his government. He shall also prepare and deliver to the commissioners of the sinking fund, lists in detail of such bonds or certificates of state debt as they shall from time to time designate, for redemption, and furnish them with such other statements and information as they may at any time require of him. He shall keep the accounts of the sinking fund with the treasury in such manner as to show distinctly at all times the amount of the transactions, on account of each appropriate head of receipts and expenditures, and shall report the same to each session of the legislature.

14. All moneys belonging to the sinking fund shall be paid into the treasury on the warrant of the second auditor, and shall be paid out in like manner when authorized by the commission of said fund.

15. The treasurer shall receive and pay the moneys belonging to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

16. In order to collect in one office the accounts of the debt of the commonwealth and the transaction of all business connected therewith, it is hereby provided that the existing certificates of debt of the state, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt created by authority of an act to provide for the further subscriptions on the part of the state to the Exchange Bank and Northwestern Bank of Virginia, passed March the nineteenth, eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semi-annual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on the auditor of public accounts, as well as

any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor: provided, that the amount of the semi-annual installment of interest of the first of July eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided. t

17. The accruing interest on the six per cent. revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per cent. war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the Literary fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

18. The semi-annual installment of interest payable the first day of July eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by 32
law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury: and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

19. The semi-annual interest becoming due at the same time, on that part of the state debt ofeighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor: provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

20. It shall be the duty of the Board of public works to cause to be paid into the treasury, to the credit of the commonwealth, on the first day of January and first day of July one thousand eight hundred and fifty-three, or within thirty days after such dates, and semi-annually thereafter, the net surplus revenue of the Fund for internal improvement during each half year preceding those days respectively, after deducting the fixed and incidental charges and special appropriations made by law on the revenue of said fund: provided, however, that nothing in this act is intended to discharge the said board from the obligation to pay the future semi-annual installments of the

interest on the certificates of the internal improvement debt owned and held by the Literary fund, as they shall hereafter become payable on and after the said first day of January eighteen hundred and fifty-three; but said interest shall be duly paid or set apart as a charge on said revenue before such surplus shall be ascertained and paid over as herein directed.

21. This act shall be in force from and after its passage.

See also Acts of Assembly referred to on plaintiff's and defendant's Joint Exhibit A-1.

Sinking Fund.

See Section 29, Constitution of Virginia, 1851,
Under heading interest on public debt, supra.

See also Chap. 17, Act of March 26, 1853,
printed under title of interest on public debt, supra.

Literary Fund.

CHAP. VIII.

An Act to Provide for the Education of the Poor.

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[Passed February 12, 1811.]

1. *Be it enacted by the General Assembly,* That all sums of money which have accrued, or may hereafter accrue to the literary fund established by an act, entitled an act, to appropriate certain escheats, penalties, confiscations and forfeitures to the encouragement of learning, shall be, and the same are hereby vested in the following persons, to wit: The governor, lieutenant governor, treasurer, attorney general and president of the court of appeals of this commonwealth for the time being, and they and their successors are hereby constituted a body politic and corporate under the denomination of the president and directors of the literary fund, with power to sue and be sued, plead and be impleaded, and to hold lands and tenements, goods and chattels, and the same to sell, dispose of or im-

prove for the purposes hereafter mentioned. And the said commissioners, or any three of them shall have power to constitute a board for the transacting of all buisness relative to the said fund, of which board, when present, the governor shall be president, and they shall have power to appoint a clerk without their own body, and such other officers as they may deem necessary, and 9
to make such rules and regulations for the better ordering of their proceedings as to them may seem meet; *Provided* they be not inconsistent with the constitution and laws of this commonwealth. And the said president and directors shall report to the general assembly once in every year the state of the funds committed to their charge, with such recommendations with regard to the improvement thereof, as to them shall seem advisable.

2. *And be it further enacted,* That in further aid of the said fund, the said president and directors are hereby empowered to raise annually for a term of years not exceeding seven, by lottery, any sum not exceeding thirty thousand dollars. In recovering money due for tickets in said lottery, the said president and directors may have remedy by motion against the purchasers thereof, and the agents and their securities who may be appointed to sell the same: *Provided moreover,* that it shall be lawful for the said president and directors to conduct all the operations of such lottery in person or by commissioners or agents by them appointed for that purpose, or if it be deemed more advisable, to contract for the drawing of the said lottery, with any undertaker or undertakers for such share of the profit thereof as to them may appear reasonable, reserving to the fund which it is designed to aid, or not, at their discretion, a greater or less interest in such lottery.

3. And for the more speedy and certain collection of the literary fund throughout the commonwealth, the said president and directors are authorised and required to appoint in each county and corporation therein an attorney or agent for the collection of the funds of that county or corporation, who shall act without any fee or emolument, and whose duty it shall be to report to the president and directors, from time to time, such portion of the said fund as any officer appointed to collect the same may have collected and failed to pay into the public treasury, or such portion thereof as may be uncollected in the hands of any person, and to authorise proper actions to be instituted for the recovery thereof in the name of the said president and directors, the costs of which shall be defrayed by the said president and directors out of the literary fund: Provided, that nothing in this act shall be construed to prevent the sheriffs of the respective counties from collecting such fines and other sums of money as they are at present by law authorised and required to collect and account for.

4. *And be it further enacted*, That as soon as a sufficient fund shall be provided for the purpose, it shall be the duty of the directors thereof to provide a school or schools for the education of the poor in each and every county of the commonwealth.

5. And whereas by an act, entitled an act to appropriate certain escheats, penalties, confiscations and forfeitures to the encouragement of learning, it is provided, that the literary fund herein mentioned shall be appropriated to the sole benefit of schools to be kept in each and every county in this commonwealth, an object equally humane, just and necessary, involving alike the interests of humanity and the preservation of the constitution, laws and liberty of the good people of this commonwealth: the present general assembly solemnly protest against any other application of the said funds by any succeeding general assembly to any other object than the education of the poor.

6. This act shall commence and be in force from the passing thereof.

[CODE OF VIRGINIA, 1849.]

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

Of what it consists and its objects. 366

C. p. 82, ch. 1, 2, 10. 3. p. 29, ch. 2.

§ 1. All money, stocks, or other property, which now or hereafter may belong to the literary fund, shall be devoted to the promotion of learning.

C. p. 82, § 1. 0, 11. 7. p. 9, ch. 8. 6. p. 31, ch. 8. 7. p. 26, ch. 18.

§ 2. To the literary fund shall belong whatever shall accrue to the state from escheats, forfeitures, or fines, (except militia fines,) from the estate of a decedent of which there is no other distributee, or from any other property as derelict and having no other owner; and also whatever shall be received from the *United States*, on account of payments by this state to officers of the Revolution, for half-pay, or commutation thereof; and whatever may arise from lands for taxes thereon, for the year eighteen hundred and thirty-one, or any year prior thereto.

5. p. 13, ch. 2.

§ 3. The clerk of the circuit court of each county west of the Alleghany mountains, shall annually, before the first day of December, transmit to the first auditor an abstract of all orders of such court, for the sale of land by the commissioners of forfeited and delinquent lands, or for the confirmation of such sales, or for the payment

of the proceeds of such sales into the treasury. Such abstracts shall shew the name of each purchaser at any such sale, the amount of money in the commissioners' hands, deducting the commissions allowed by the court, and the expenses of sale, and also whether the said commissioners have made reports of their proceedings according to law. Any clerk failing to comply with this section shall forfeit six hundred dollars.

See post, ch. § 1, 2, 3, and to those sec

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CHAP. 26.—An ACT appropriating the entire capitation tax to the purposes of education in primary and free schools.

Passed March 25, 1853. 43

1. Be it enacted by the general assembly, That the auditor of public accounts shall annually, on the first day of January, upon the order of the second auditor, set apart and pay into the treasury, to the credit of the Literary fund, for the purposes of education in primary and free schools, the amount of the capitation tax for the preceding year, after deducting therefrom the commissions of sheriffs and collectors, and the amount of insolvent returns on account of the capitation tax allowed during the preceding year.

2. The amount of said tax for the year eighteen hundred and fifty-two, after deducting the commissions of sheriffs and collectors, shall be set apart and paid as aforesaid immediately after the passage of this act.

3. The second auditor shall cause the amount received during the present year to be apportioned and applied to the purposes of education in primary and free schools, as far as practicable, as if it had been received on the first day of January last and after the first day of January next, and annually thereafter, the amounts received shall be apportioned amongst the several counties, and those cities and towns which have corporation courts, in the same manner as the appropriations from the Literary fund for the same purposes are now or may be hereafter made, and shall be paid and applied as is now or may be hereafter prescribed by law.

4. This act shall be in force from its passage.

See also title "Payments to School Commissioners." Supra.

Virginia Military Institute. 17

CHAP. 20—An ACT amending and reducing into one the several acts concerning the re-organization of the Lexington arsenal and the establishment therewith of a military school at Washington college.

Passed March 29, 1839.

Whereas it is represented to the general assembly, that the state arsenal situated near the town of Lexington, in the county of Rockbridge, can be advantageously converted into a public military school without endangering the public arms, or other property, thereto belonging, and without imposing any additional expense upon the commonwealth:

1. *Be it therefore enacted*, That the sum of six thousand dollars, be and the same is hereby appropriated annually from the public treasury for the establishment and support of a military school at the said arsenal, upon the plan hereinafter provided for, which said school shall be called the "Virginia Military Institute."

2. *Be it further enacted*, That the governor of this commonwealth shall annually appoint nine fit and proper persons, who, together with the adjutant general shall constitute a board of visitors for said military school, any four of whom shall constitute a quorum for the transaction of the mere ordinary business, but in making arrangements for the erection of buildings, or for material and permanent alterations of the present buildings, as well as the removal of professors from office, not less than six shall constitute a quorum. And it shall be the duty of said visitors on or before the first day of June next, and annually thereafter, at such times as they themselves shall designate, to meet at said arsenal, and there to establish and declare such regulations as they may deem necessary and proper for the organization and good government of said school. Said visitors shall have power to establish such by-laws for the management of the school, and the protection of the public property, as shall not be inconsistent with the laws of this state, or of the United States; shall appoint a treasurer, taking from him bond with ample security, made payable to the governor, and his successors in office, and conditioned for the faithful keeping and disbursement of such moneys herein appropriated, and such other moneys as shall be allowed by said visitors, from time to time, to come into his hands; they shall also examine and settle his accounts an- 18
nually or oftener; inspect the public arms and other property, at said arsenal, and make minute and full report of their condition, as well as the condition of the school to the governor, to be by him

laid before the general assembly; shall have power to appoint one or more professors qualified to give instruction in military science, and in other branches of knowledge, which they the said managers may deem essential; to fix the salaries of said professors, and to remove them for a good cause; but in every case of removal, a majority of the whole number of visitors shall concur, and shall communicate to the governor in writing, a full statement of the reasons upon which the removal was made. Besides prescribing the general terms upon which students may be admitted, the course of their instruction, the kind and duration of their service, (which duration shall not exceed five, nor be less than two years,) the said visitors are still further empowered to admit as the regular students or cadets at said military school any number of young men not fewer than twenty, nor exceeding forty, and who shall not be less than sixteen nor more than twenty-five years of age; and in this admission to be made upon undoubted evidence of fair moral character, a strict regard shall be had to the proportionate population of the four great constitutional divisions of the state, taking in the first place one from each senatorial district, offering one, so that the relative claims of each one to a due participation in the benefits of said school may be secured; but in the event of any of the constitutional divisions of the state not furnishing their full proportions of students, the board of visitors after having given due notice of such deficiency, shall be and are hereby authorized to fill such vacancy or vacancies, with proper applications from any other of the constitutional divisions of the state. The students at the school thus admitted shall be formed into a military corps, and shall constitute the public guard of the arsenal aforesaid. And whenever the said visitors shall certify to the governor that the said school is ready to go into operation, and that a sufficient number of students or cadets have been admitted, to guard effectually the public arms, and other property at the said arsenal, the governor shall forthwith disband the present public guard, and order the grounds, buildings, arms and all other property belonging to said arsenal, to be surrendered to said visitors, or to any one thereof, who may have been designated by them to receive such surrender. And the said professors and military students shall be collectively and individually responsible for the safe keeping, protection and preservation of the said grounds, buildings, arms and other property, in all respects, as the commandant, other officers and public guard are now responsible.

3. Any three of the visitors may form a board for the transaction of business, and all vacancies occurring from death, removal, refusal to act or otherwise, shall be immediately communicated by the residue of said visitors to the governor, who shall forthwith proceed

to supply them. All reasonable expenses incurred by said visitors in discharging the duties hereby imposed upon them, (not including however any wages or per diem compensation,) shall be allowed, and when admitted by the governor, shall by him be caused to be paid by warrant on the treasury.

4. Any commissioned officer of the militia of Virginia, may enter as a pupil the school hereby established for a period of time not exceeding ten months, and receive instruction in any- 19
or all of the departments of military science, therein taught, without being required to pay any fee or charge whatsoever, but such officer shall not be recognized as a regular student, and as such admitted to the further privileges hereafter provided for.

5. And whereas it is believed by the general assembly, that some auxiliary connexion between the arsenal hereby erected into a public school, and Washington college, which is situated in its vicinity, might be established, and in such way as to promote the purposes and benefits of instruction, in both: *Be it therefore enacted*, That the visitors aforesaid shall have full power to enter into any legal arrangement with the trustees of said Washington college, by which the students at the arsenal and those at the college may respectively be admitted to all the advantages and departments of instruction provided for at either place, and upon such terms as said parties shall mutually stipulate, and which terms may from time to time be varied, or may be revoked as the parties may mutually determine.

6. That it shall be lawful for the board of visitors to expend so much of the appropriation herein provided, as may be proper for the repair and erection of such buildings as may be necessary for the accommodation of officers and students of said military school. Said board of visitors shall be and are hereby authorized to contract for and have erected, at such time as they may deem proper and necessary, such additional building or buildings: *Provided however*, That such expenditure shall not exceed one thousand dollars annually for the first three years, and in any subsequent year shall not exceed the sum of five hundred dollars.

7. The act, entitled, "an act re-organizing the Lexington arsenal, and establishing a military school in connexion with Washington college," passed March the twenty-second, eighteen hundred and thirty-six, is hereby repealed.

8. This act shall be in force from the passing thereof.

CHAP. 15.—An ACT providing for the erection of a steward's house, and for furnishing a supply of water for the Virginia military institute.

[Passed March 6, 1840.] 26

Whereas it is represented to the general assembly, that a reorganization of the Lexington arsenal has taken place, agreeably to the provisions of the act passed March the twenty-ninth, eighteen hundred and thirty-nine, entitled "an act to reorganize the Lexington arsenal, and to establish a military school thereat," and that a military school is now in successful operation; and whereas it is represented by the board of visitors, as well as by the principal professor of the Virginia military institute, that a house for the steward and his family is greatly needed, as also a supply of good water within the enclosure of said institute:

1. *Be it therefore enacted,* That the sum of four thousand five hundred dollars be and is hereby appropriated out of any money in the treasury not otherwise appropriated, which sum shall be applied to the erection of a steward's house, the conveying of water by iron pipes to the institution, and to such other purposes as the board of visitors may consider necessary to its prosperity: *Provided nevertheless,* That the said sum of four thousand five hundred dollars shall be paid by the warrant of the first auditor on the treasury in three payments, as follows: fifteen hundred dollars in the present year, fifteen hundred dollars in the year eighteen hundred and forty-one, and fifteen hundred dollars in the year eighteen hundred and forty-two: *And provided also,* That no money shall be expended under this act, until a contract or contracts shall have been made to complete the several works herein provided for, so that the entire cost thereof shall not exceed the above mentioned sum.

2. This act shall be in force from the passing thereof.

CHAP. 27.—An ACT providing for the erection of a magazine and shelter for artillery at the Virginia military institute.

[Passed February 14, 1844.] 22

Whereas it is represented to the general assembly that a magazine for the safe-keeping of powder is necessary, as well to the security of the public property as to the safety of the professors and cadets of the Virginia military institute, and that a shelter for the artillery at that post is also necessary for its preservation:

1. *Be it therefore enacted,* That a sum not exceeding one thousand dollars shall be and is hereby appropriated for the erection of the said buildings; the work to be contracted for by the superintendent of the institute, with the sanction of the board of visitors, upon whose certificate of the execution and cost of the work, the auditor shall issue his warrant or warrants for the amount, to be paid out of any money in the treasury not otherwise appropriated.

2. This act shall be in force from the passing thereof.

CHAP. 17.—An ACT concerning the Virginia military institute, the University, and the colleges of the commonwealth.

[Passed March 7, 1848.] 18

Whereas it is represented to the general assembly by the board of visitors of the Virginia military institute, that they have been constrained to provide a residence for the additional professor authorized by the act of the last session of the general assembly; and also, that a small but convenient hospital should be erected for said institute:

1. *Be it therefore enacted,* That for the purpose of erecting a house for said professor, and for the purpose of erecting a hospital at said institute, the sum of four thousand five hun- 19
dred dollars be, and the same is hereby appropriated, payable out of any money in the treasury not otherwise appropriated, to the treasurer of the said institute: *Provided,* That the money hereby appropriated shall be so expended as to fully complete and finish the buildings hereby authorized to be erected.

* * * * *

CHAP. 19.— An ACT making an appropriation for the erection of new barracks at the Virginia military Institute.

[Passed March 8, 1850.]

Whereas it appears to the general assembly, by various reports of the board of visitors of the Virginia military institute, that the buildings occupied as quarters for the cadets are wholly inadequate in extent, are unsuitable in their construction for the purposes of a military school, are in a dilapidated and uncomfortable condition, exposing the health of the cadets and subjecting the large

amount of public property in the arsenal to destruction by 17
fire, and that improvements in regard to other buildings and to the grounds and enclosures are absolutely necessary:

1. *Be it therefore enacted by the general assembly,* That the sum of eleven thousand five hundred dollars a year for four years shall be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, to be applied to the construction of suitable buildings for quarters for the cadets and for other purposes, as specified in the report of the board of visitors of the fifteenth September, eighteen hundred and forty-nine; this appropriation to be drawn upon the order of the board of visitors from time to time, after contracts have been made and approved by the said board for the said buildings and improvements.

2. This act shall be in force from its passage.

CHAP. 20.—An ACT appropriating the public revenue for the fiscal year 1851 and 1852.

[Passed June 5, 1852.] 20

* * * military school at Lexington, for support, seven thousand, seven hundred and ten dollars; and for balance of appropriation for erection of new barracks, under the act of eleventh of March, eighteen hundred and fifty, five thousand dollars: * * *

CHAP. 34.—An ACT making provision for additional accommodation for the cadets of the Virginia military institute.

[Passed May 29, 1852.] 29

Whereas it is represented by the board of visitors of the Virginia military institute that the quarters provided in the new barracks erected under the act of March eighth, one thousand eight hundred and fifty, are insufficient to accommodate the additional state and pay cadets designed to be admitted, and an addition of funds is needed for this purpose, and also to meet the cost of the improved heating and lighting arrangements introduced by the board of visitors:

1. *Be it enacted by the general assembly,* That the sum of thirty thousand dollars be and the same is hereby appropriated, from any funds in the treasury not otherwise appropriated, for these pur-

poses, and the auditor of public accounts is hereby instructed to issue his warrant for the same, upon the order of the president of the board of visitors.

2. *Be it further enacted,* That so much of the first section of the act, entitled "an act appropriating the public revenue," passed March seventh, one thousand eight hundred and fifty-one, as appropriates the sum of twenty-three thousand dollars to the military school at Lexington for erecting new barracks, be and the same is hereby repealed.

3. This act shall be in force from its passage.

CHAP. 42.—An ACT providing for the completion of the barracks and the erection of a mess hall at the Virginia military institute.

Passed March 1, 1854. 31

1. Be it enacted by the general assembly, that the sum of twenty thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of completing the barracks and erecting a mess-house at the Virginia military institute, to be paid in installments of five thousand dollars each: the first to be paid on the first day of April eighteen hunderd and fifty-four; the second, on the first day of June, eighteen hunderd and fifty-four; the third, on the first day of August eighteen hundred and fifty-four; and the fourth, on the first day of October eighteen hundred and fifty-four.

2. The expenditure of the appropriation herein authorized shall be made under the supervision of an architect to be appointed by the board of visitors.

3. This act shall be in force from its passage.

CHAP. 162.—An ACT making an appropriation to the Virginia military institute for the purpose of completing its buildings, enclosing its grounds and procuring a supply of water for said institute.

Passed March 31, 1858. 115

1. Be it enacted by the general assembly, that the sum of twenty-five thousand dollars be and is hereby appropriated to the Virginia military institute out of any money in the treasury not otherwise appropriated, to be expended as follows: Sixteen thousand dollars to meet the deficiency in the building fund and complete the barracks and

mess hall; six thousand for procuring a supply of water for the institution, and three thousand for enclosing the grounds; but not more than ten thousand dollars of the appropriation herein made shall be called for in any one of the two fiscal years ending on the thirtieth of September eighteen hundred and fifty-nine.

2. Before any part of the money herein appropriated shall be expended for the objects severally specified, except the sum of ten thousand dollars to meet the present deficiency in the building fund, the board of visitors shall obtain from competent men, practically acquainted with such matters, in no wise connected with the said institution, plans and estimates of cost for each item of expenditure; and if the estimated cost shall not exceed the sums herein specified for each of the objects contemplated, and are approved by the board, the work shall be contracted for by the board, and executed under the supervision of the superintendent of the said institution: provided, that it shall be the duty of the board to contract for such work at the lowest price for plain and substantial constructions suitable to said several objects, and shall not under any circumstances exceed the amounts thereto respectively appropriated, or pledge the faith and credit of the state in any manner to pay a greater sum therefor than is herein specially provided: and provided further, that if more work is done than is contemplated by this act, or at a cost greater than that therein specified, the said superintendent alone shall be responsible therefor. 116

3. Nothing in this act is to be construed as an approval of the board of visitors in exceeding the appropriations heretofore made to the military institute; and it is the express intent and purpose of the general assembly that no contract shall be entered into for any work or object contained in this act, unless the same is strictly limited to an amount not exceeding the sums respectively designated for such work or object.

4. This act shall be in force from its passage.

CHAP. 7.—An ACT making an additional appropriation to the Virginia Military Institute.

103

Passed March 28, 1860.

1. Whereas it is represented to the general assembly of Virginia, by the board of visitors of the Virginia military institute, that the present buildings at the said institute are insufficient for the purposes of the school as a military organization, and that additional appropriations are absolutely required to provide additional accommodations for cadets and for the support of the school: and it appearing further, that the corps of cadets, in the course of their regular military education,

may readily be employed to prepare such munitions of war as may be demanded by the wants of the state:

1. Be it enacted by the general assembly, that the sum of twenty thousand dollars be and the same is hereby appropriated from any money in the treasury not otherwise appropriated, for the erection of such additional buildings as may, in the judgment of the board of visitors, be demanded for giving effect to the purposes of this act: the same to be drawn in two annual payments—one-half in eighteen hundred and sixty, and the other half in eighteen hundred and sixty-one, upon the order of the board of visitors aforesaid.

2. The board of visitors shall admit, as state cadets, free of charge for board and tuition, not less than fifty young men, in lieu of the number now required, with the qualifications now prescribed by law, one of whom shall be selected from each of the senatorial districts as at present constituted. Whenever a vacancy has occurred, or is likely to occur, due notice of the time and place of making the appointment to supply the vacancy shall be given. If, after such notice, no suitable person shall apply from any district, the vacancy may be supplied from the state at large. And for the purpose of providing a fund for the support of the state cadets herein required to be admitted, the additional sum of five thousand seven hundred and ninety dollars is hereby appropriated annually; and the auditor of public accounts is hereby authorized and required to issue his warrant or warrants 104
on the treasury for the same, in the manner that other warrants to the said institute have been heretofore issued.

3. This act shall be in force from its passage.

University of Virginia Water Supply.

CHAP. 36.—An ACT making an appropriation to the University of Virginia for certain purposes.

Passed February 28, 1854. 26

1. Be it enacted by the general assembly that the sum of twenty-five thousand dollars be and the same is hereby appropriated to the University of Virginia, for the purpose of repairing and improving the buildings thereof, and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the institution.

2. The appropriation hereby directed shall be paid out of the treasury of the commonwealth, upon the order of the bursar of the university, on the auditor of public accounts, and shall be applied to the purposes named in the first section of this act, and to none others whatsoever.

3. This act shall be in force from its passage.

Improvements Capitol Square.

CHAP. IV.—An act providing for repairs to the Capitol.

[Passed March 19th, 1832.]

1. *Be it enacted by the general assembly,* That the superintendent of public buildings be and he is hereby authorized and required to contract, on behalf of the commonwealth, for such repairs to the capitol in the city of Richmond, as in the opinion of the said superintendent may be deemed necessary for the preservation and good appearance of the building, including stuccoing, plastering, carpenter's work, painting, stone masonry, and any other description of mechanical labour which may be necessary to effect that object; and to make a suitable communication between F street and the capitol square, at the northern end of the Museum, or other suitable place at or near thereto: also for such alterations in the ground floor of the building, as may be calculated to improve the condition of the public offices, and preserve the public records and papers deposited therein: and it shall be the duty of the said superintendent to cause the stoves now in the hall of the house of delegates to be removed, and to substitute therefor either suitable fire places or open stoves, to be placed in such parts of the hall as will more comfortably and effectually warm the same; and also to make such alterations in the fire-places in the senate chamber as may be necessary, or to substitute Franklin stoves therefor; also to purchase a neat and substantial chandelier for the use of said hall, and also one for the use of the senate chamber. The said superintendent shall, in such manner as the governor may direct, cause to be fitted up and put in good order a room for the office of the clerk of the senate, and also a room for the office of the clerk of the house of delegates, for the preservation of the books and papers belonging to their respective offices: *Provided, however,* That the expenditures for all the said repairs and improvements, shall not exceed the sum of ten thousand five hundred dollars.

2. *Be it further enacted,* That any contract made by the superintendent, under the authority of this act, shall be submitted to the governor and be approved by him, before any such contract shall be binding on the commonwealth, and that it shall be the duty of the said superintendent to superintend the execution of the work hereby authorized, and see that the same be faithfully performed according to contract. All accounts for the repairs and improvements hereby required to be made, shall be certified by the superintendent of public buildings and approved by the governor, whereupon they shall be paid out of the treasury on the auditor's warrant for the same.

3. This act shall be in force from and after the passage thereof.

CHAP. 11.—An ACT authorizing the purchase of certain vacant lots adjoining the public square, and the sale of a strip of land near the law building of B. B. Minor.

15

[Passed April 3, 1848.]

1. *Be it enacted by the general assembly,* That the executive be and he is hereby authorized and required to purchase, or cause to be purchased, for and on behalf of the commonwealth, the vacant ground on Governor street, at or near the southeastern corner of the capitol square, and adjoining the government grounds attached to the governor's house; and also so much of the adjoining lot of Mr. Joseph Allen, as may be desirable: *Provided,* That said lots can purchased at a price not exceeding forty dollars per foot, fronting on said street, or at that sum per foot front on such other street or cross street, as any part thereof may front, and to which a good, sufficient and valid title in fee simple, can be made by the owner or owners thereof, by such deed or deeds conveying the same to the executive, or governor of the commonwealth for the time being, and his successors in office, for the use and benefit of the commonwealth, as may be approved by the attorney general, (and duly admitted to record in the proper office,) as good and sufficient to convey such title in and to the same. Whereupon the auditor of public accounts shall, upon the production to him of such deed or deeds, duly certified by the clerk of the proper court, as having been admitted to record in his office, accompanied by a certificate from the executive that all the preliminaries of the conveyance have been fully complied with, issue his warrant or warrants on the treasury, in favour of the grantor or grantors, or their order, or their heirs or assigns, their executors or administrators, for the amount of such purchase money, payable out of any money therein not otherwise appropriated. The said deed or deeds, shall be filed and preserved in the executive chamber. And after the said purchase shall be completed, the said land or lots shall be considered as part of the government grounds composing the public or capitol square, and under the same care and control until otherwise ordered.

2. *Be it further enacted,* That the executive be and is hereby authorized to sell to B. B. Minor, or to his heirs or assigns, a certain strip of the public ground near to, and corresponding in length with his law building erected upon so much of the public lot on Franklin street as was sold to him under the authority of the act, entitled "an act to provide for the repairs of the capitol and governor's house, and the erection of a courthouse," passed March the second, eighteen hundred and forty-six, and not exceeding in depth twenty feet, at such price, and on such terms as may be agreed upon by and between the said parties; and not exceeding, if any credit be allowed, six, twelve

and eighteen months, taking from the purchaser a lien upon the property, with personal security, to secure the payment of such purchase money. And the money arising from such sale, shall be paid into the treasury of the commonwealth, after being duly audited according to the provisions of this act, and such contract as shall be made with the executive for the sale thereof, (which contract shall be filed in the office of the auditor of public accounts,) deducting only the proper or necessary expenses, if any, attending the execution of such contract and sale. 16

3. This act shall be in force from the passing thereof.

Fugitive Slave Expense, and Rewards, (Additional.)

CHAP. 48.—An ACT to amend the 24th, 25th, 26th, 27th and 28th sections of chapter 192 of the Code of Virginia, so as more effectually to prevent the escape of slaves. 41

Passed March 17, 1856.

1. Be it enacted by the general assembly, that the twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth sections of chapter one hundred and ninety-two of the Code of Virginia be and the same are hereby amended and re-enacted so as to read as follows:

* * * * *

Any free white person, who will give such information as will lead to the conviction of a free white person engaged in carrying off or attempting to carry off a slave, or in any manner concerned in aiding or persuading a slave to escape or attempt to escape, shall be entitled to a reward of five hundred dollars: to be paid by the state on the order of the court convicting the party of such offense: provided such conviction be procured by other testimony than that of the informer; or if such testimony be used upon the trial, that the same shall be sustained by other corroborating facts or circumstances, to be certified by said court. 43

* * * * *

CHAP. 49.—An ACT to amend the 4th section of chapter 105 of the Code so as to increase the rewards for the arrest of runaway slaves.

Passed March 17, 1856. 43

* * * * *

7. Upon the arrest of a fugitive slave in a nonslaveholding state, when under the provisions of this section the person making such arrest is entitled to a reward of as much as or more than one 44

hundred dollars from the owner of such slave, it shall be the duty of the auditor of public accounts to issue his warrant on the treasury for the sum of fifty dollars, in favor of such person or his assigns: provided, that a certificate from the court of the county in which the value of such slave has been ascertained, under the provisions of this section, (or when it appears to the said court that such value has been agreed upon by the parties, stating the fact of such arrest and the amount of such reward,) shall be presented to the auditor within three months from its date, and within twelve months from the date of such arrest; which, in all cases, shall be stated in such certificate.

8. The amount herein provided to be paid by the auditor of public accounts, to the person holding the certificate of the county court as aforesaid, shall only be payable out of any moneys in the treasury arising from fines, forfeitures and confiscation, imposed and made under the provisions of laws now existing and hereafter to be enacted, providing for the punishment of persons aiding and abetting the escape of slaves, or interfering with the rights of property in slaves, and from funds arising from the sale of free negro convicts failing to leave the state after the expiration of their term of imprisonment.

9. Whenever the said reward, to be paid by the owner of the slave so arrested, shall have been certified by the court, as herein provided, to be due to the person apprehending such slave, and the same shall not be paid or satisfied within thirty days from the date of such certificate, after demand made therefor, the owner or holder of such certificate shall be empowered and he is hereby authorized to recover the same by motion, after ten days' notice, together with the costs of such motion, before any court of record in the county where the owner of said slave may reside, or in which the said slave may be.

* * * * *

Penitentiary.

CHAP 19.—An ACT concerning the penitentiary institution.

(Passed March 9th, 1833.) 18

1. *Be it enacted by the general assembly of Virginia*, That the governor be, and he is hereby authorized to cause to be erected at the penitentiary, a suitable and convenient hospital for the accommodation of the sick therein; also, to cause the outer walls of the prison to be well ventilated, in a secure and substantial manner, and to have erected suitable buildings and sheds easy of access from the work shops, and perfectly secure against escapes, for the preservation and security of timber and manufactured articles, and if found necessary for security, to enlarge a part of the outer walls to take them within the enclos-

ure. A sum not exceeding seven thousand dollars shall be, and the same is hereby appropriated to defray the expense of the aforesaid improvements, to be paid on the orders of the governor.

2. *Be it further enacted,* That the solitary confinement of convicts in the penitentiary, constituting a part of the sentence of the court, shall not exceed one twelfth part of the whole term of imprisonment, and it shall be inflicted at intervals not exceeding one month of solitude at a time; any law to the contrary notwithstanding.

3. *Be it further enacted,* That the fourth section of the act passed the twenty-seventh day of February, eighteen hundred and twenty-nine, entitled, "an act concerning the penitentiary institution," shall be and the same is hereby repealed.

4. *Be it further enacted,* That the governor be required to cause to be made an estimate of the expense of draining the pond near the penitentiary, by means of a culvert or otherwise.

5. This act shall be in force from its passage.

Calling out Militia at Wheeling in 1838.

CHAP. 34.—An ACT concerning certain volunteer companies of the fourth regiment of Virginia militia.

41

(Passed April 7, 1838.)

Whereas it appears to the general assembly that the colonel commandant of the fourth regiment Virginia militia, upon the requisition of the sheriff of Ohio county, made on the fifth day of June, eighteen hundred and thirty-six, ordered into service the Wheeling guards, the City blues, and the Wheeling riflemen, three infantry companies attached to said regiment, and that said companies did continue in actual service from the fifth to the fifteenth day of August, eighteen hundred and thirty-six, in guarding the jail and protecting the persons and property of the citizens of said county, for which it is right that they should receive the usual pay of the militia when in actual service:

1. *Be it therefore enacted,* That the auditor of public accounts is hereby authorized and required to issue and deliver to the colonel of said regiment, or his order, a warrant upon the treasury for the sum of one thousand and ninety-nine dollars, payable out of any money therein not otherwise appropriated: *Provided,* That the auditor shall first take bond with good security, in the penalty of two thousand dollars, payable to the governor or chief magistrate of this commonwealth, conditioned for the faithful distribution of the said 42
sum of money as hereinafter directed.

2. *Be it further enacted,* That the said colonel of the said regiment shall distribute the said sum of money between the said three companies in proportion to the number of officers and privates employed in each company, and shall pay the same into the treasury of each company for the use and benefit of said companies,

3. This act shall be in force from the passing thereof.

Medical College of Virginia.

CHAP. 8.—An ACT appropriating $30,000 to the Medical College of Virginia, for enlarging its Hospital or Infirmary; for extending the College Buildings, and for the improvement and extension of the College Museum.

Passed March 1, 1860. 104

1. Be it enacted by the general assembly, That there be and is hereby appropriated out of the treasury, out of any money not otherwise appropriated, the sum of thirty thousand dollars; to be paid to the Medical College of Virginia for the purposes herein after set forth.

2. The Medical college of Virginia shall apply the sum of money hereby appropriated solely to the purpose of enlarging the hospital or infirmary annexed to the college; of extending the college buildings for the accommodation of a larger number of students, and for the improvement and extension of the college museum: And the said sum of money shall be applied to the several purposes herein stated, in such proportions as shall be deemed proper by the trustees of the said Medical college of Virginia.

3. Provided, that the said sum of thirty thousand dollars shall not be paid until a deed, conveying all the property of said college to the Literary fund, shall be prepared by the attorney general, and approved of by the governor of the state, and executed by the college authorities acknowledged and duly recorded: And provided further, that the money shall not be drawn from the treasury until, in the opinion of the governor, it is needed for the purposes contemplated by this act.

4. This act shall be in force from its passage.

Lunatic Hospitals.

EASTERN ASYLUM AT WILLIAMSBURG.

CHAPTER 90.—An act to provide for the enlargement of the lunatic hospital in the city of Williamsburg.

(Passed March 5th, 1824.) 93

Whereas it is represented to this General Assembly, that the females confined in the lunatic hospital, are entirely destitute of a convalescent apartment; and whereas it is also represented, that many citizens unfortunately suffering under mental derangement, are now confined in common jails within this Commonwealth, because of the want of accommodation for them in the said hospital, and whose situation humanity loudly and justly calls upon the General Assembly to relieve;

1. *Be it therefore enacted by the General Assembly*, That the court of directors of the hospital in the city of Williamsburg, for the maintenance and cure of persons of unsound mind, be and they are hereby authorised to contract for, or let to the lowest bidder., the erection of an additional brick building, containing a convalescent apartment for the females, and as many cells or separate apartments for the accommodation of patients, as to the said court of directors shall seem necessary. To enable the said directors to erect the aforesaid additional building, they, or a majority of them, are hereby authorised, through their treasurer, in the manner now prescribed by law, from time to time, to draw upon the auditor of public accounts, for such sums as may be required for the completion of the aforesaid additional building, not exceeding five thousand dollars; for which draft or drafts the auditor of public accounts is hereby authorised and required to issue warrants on the treasury, which shall be paid out of any money therein not otherwise appropriated. The accounts for money expended in erection of the aforesaid building, shall be settled by the treasurer with the court of directors, and certified in the same manner as all other accounts of the hospital are passed and certified.

2. This act shall commence and be in force from and after the passage thereof.

CHAP. 29.—An ACT to provide for extending and enlarging the lunatic hospitals.

[Passed March 1st, 1833.] 22

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital, or any seven of them, shall be, and they are

hereby empowered to contract for the extension of the buildings of that institution, so as to make the same fit for the reception and accommodation of an additional number of lunatics, having previously given public notice, by advertisement, in some newspaper printed in the city of Richmond, and in some other newspaper printed in the town of Staunton, for sixty days, that they will receive proposals for the building thereof; and shall take bond with sufficient security, from the contractor or contractors, in the penal sum of twenty thousand dollars, payable to themselves, and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of said directors.

2. The said directors shall have full power, from time to time, to order and direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for such sums of money as may be necessary to defray the expenses of said additional building: *Provided*, That the plan and dimensions of said building shall be agreed upon and prescribed by said directors, and shall contain no more than forty cells or apartments: *And provided*, That the whole expense thereof shall not exceed six thousand dollars.

3. *Be it further enacted*, That the court of directors of the Western lunatic hospital shall, in like manner, be and they are hereby authorized to contract for conducting an ample supply of good spring water to the said hospital, in iron pipes, without the use of forcing pump or other machinery: *Provided*, The whole expense thereof 23 shall not exceed one thousand dollars.

4. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be and they are hereby empowered, in like manner, and for the same purposes as above prescribed, to contract for and cause to be erected, an additional building for that institution, calculated to accommodate an additional number of lunatics, not exceeding forty: *Provided*, That the mode of making the contracts therefor, and the payment on that account from the treasury, shall be the same as above provided for the Western lunatic hospital: *And provided*, That the whole expense shall not exceed six thousand dollars.

5. This act shall be in force from the passage thereof.

CHAP. 19.—An ACT to amend an act, entitled, "an act to provide for extending and enlarging the lunatic hospitals," passed March 1st, 1833.

(Passed March 12, 1834.) 27

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital, and the directors of the lunatic hospital at

Williamsburg, shall have full power to order and direct their treasurers, respectively, to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary to defray the expenses of the additional buildings of those institutions, authorized by an act of this legislature, passed the first of March, eighteen hundred and thirty-three, entitled, "an act to provide for extending and enlarging the lunatic hospitals:" *Provided*, The whole expense thereof shall not exceed nine thousand dollars for each hospital, over and above the amount already appropriated to those objects by the said act of the first of March, eighteen hundred and thirty-three.

2. This act shall be in force from and after the passing thereof.

CHAP. 17.—An ACT providing for a further appropriation to complete the improvements at the lunatic hospitals at Williamsburg and Staunton.

(Passed March 12, 1835.) 17

1. *Be it enacted by the general assembly*, That the directors of the lunatic hospital at Williamsburg be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth for the sum of two thousand six hundred and sixty dollars, which sum it has been represented will be necessary to complete the additional buildings at said institution, which said amount of two thousand six hundred and sixty dollars the treasurer of the commonwealth is hereby authorized and empowered to pay to the order of the treasurer of the institution aforesaid out of any money in the treasury not otherwise appropriated.

2. *Be it further enacted*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money in addition to the sum appropriated by the act of March first, eighteen hundred and thirty-three, as may be necessary for the fulfilment of their contract for conducting an ample supply of good spring water to the said hospital in iron pipes: *Provided*, The said additional sum hereby appropriated shall 18 not exceed the sum of twelve hundred dollars.

3. *Be it further enacted*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money in addition to the sums heretofore appropriated by the act of March the first, eighteen hundred and thirty-three, and the act of

March the twelfth, eighteen hundred and thirty-four, as may be necessary for the fulfilment of their contracts for the completion of the additional buildings authorized by said acts: *Provided*, The said further sum hereby appropriated shall not exceed the sum of fifteen hundred dollars; and for completing the graduation, and building partition walls for the male and female wards, the sum of fifteen hundred dollars.

4. This act shall be in force from and after the passing thereof.

CHAP. 19.—An ACT concerning the Western lunatic hospital and the lunatic hospital at Williamsburg.

(Passed March 31, 1837.) 18

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital and the directors of the lunatic hospital at Williamsburg, be and they are hereby authorized and empowered, in behalf of their institutions, severally to direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for such sum or sums of money as may be necessary for the purchase of land, near each of said hospitals, a neat two horse carriage, and a pair of horses, and such other articles as are recommended in the report of the physician of the Western lunatic hospital, communicated by the directors thereof to the present general assembly, and by them caused to be printed, as are calculated in the opinion of the directors of said hospitals, to aid in the restoration of patients confined in a lunatic hospital: *Provided*, That the expenditures thereby incurred, do not exceed the sum of one thousand dollars, for each of said hospitals, and which sum is hereby appropriated for said purposes.

2. This act shall be in force from the passing thereof.

CHAP. 21.—An ACT providing for the enlargement of the lunatic hospitals of the commonwealth, and for other purposes.

(Passed April 3, 1838.) 33

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic asylum, or any seven of them, shall be, and they are hereby empowered to contract for the extension of the buildings of that institution, so as to make the same fit for the reception and accommodation of an additional number of lunatics, having previously given

public notice by advertisement in some newspaper printed in the city of Richmond, and in some other newspaper printed in the town of Staunton, for sixty days, that they will receive proposals for the building thereof; and shall take bond, with sufficient security, from the contractor or contractors, in the penal sum of twenty-four thousand dollars, payable to themselves, and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of said directors.

2. The said directors shall have full power, from time to time, to order and direct their treasurer to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary to defray the expenses of said additional building: *Provided*, That the plan and dimensions of said building shall be agreed upon and prescribed by said directors: *And provided also*, That the whole expense thereof shall not exceed twelve thousand dollars.

3. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be, and they are hereby empowered, in like manner, and for the same purposes as above prescribed, to contract for and cause to be erected an additional building for that institution, calculated to accommodate an additional number of lunatics: *Provided*, That the mode of making the contracts therefor, and the payment on that account from the treasury, shall be the same as above provided for the Western lunatic hospital: *And provided also*, That the whole expense thereof shall not exceed twelve thousand dollars.

4. *Be it further enacted*, That the directors of the Western lunatic hospital are hereby authorized and empowered, in behalf of that institution, to direct their treasurer to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as are recommended by the report of the physician of the Western lunatic hospital, or by the report of the directors of said institution to the present general assembly: *Provided*, That the expenditures thereby incurred do not exceed five thousand dollars.

5. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be, and they are hereby empowered to contract for the enclosures and other buildings recommended in the report of the directors of that institution, to the present general assembly, on the terms they may think most suitable; and they shall have full power to order their treasurer to draw on the treasurer of the commonwealth for such sum or sums of money (to be audited by the auditor of public accounts) as may be necessary to complete the same: *Provided*, That the whole expense thereof shall not exceed five thousand dollars.

6. This act shall be in force from its passage.

CHAP. 19.—An ACT providing for the enlargment of the lunatic asylums of the commonwealth.

[Passed March 25, 1842.]

1. *Be it enacted by the general assembly,* That the directors of the Western asylum for the maintenance and cure of insane persons, shall be, and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice, by advertisement in some newspaper published in the city of Richmond, and a newspaper published in the town of Staunton, that they will receive proposals for the work authorized; and on the letting out of said work, they shall take bond with approved security, from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

2. *Be it further enacted,* That a sum not exceeding twenty-four thousand dollars be, and the same is hereby appropriated, for the entire completion of the additional buildings hereby authorized, to be paid out of the treasury of the commonwealth upon the order of the court of directors of said Western asylum, in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: eight thousand dollars on the ratification of the contract and the execution of the bond required; eight thousand dollars in twelve months thereafter; and the remaining eight thousand on the completion of the building, provided the same shall not be in less than twelve months from the last payment.

3. *Be it further enacted,* That the directors of the Eastern asylum for the maintenance and cure of insane persons, shall be, and they are hereby empowered in like manner to contract for and cause to be erected an addition to the Eastern asylum, at an expense not exceeding twelve thousand dollars, to be paid in the following manner: six thousand dollars when the contract is ratified and the bond duly executed; and the remaining six thousand dollars on the completion of the building, provided the same shall not be in less than twelve months after the first payment is drawn. The mode and terms of contracting shall be the same as that provided for in the erection of the addition to the Western asylum, except as to the cost and payment, and that the advertisement for proposals shall be in some newspaper published in the borough of Norfolk instead of the town of Staunton.

4. This act shall be in force from the passing thereof.

CHAP. 12.—An ACT appropriating a sum of money therein mentioned to John B. Hart and Martin Tutwiler, securities of John K. Sheperson for the erection of an additional building to the Eastern lunatic asylum at Williamsburg.

[Passed February 12, 1844.] 17

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and he is hereby authorized to issue his warrant on the treasury, (upon the requisition of the directors of the Eastern lunatic asylum at Williamsburg,) in favour John B. Hart and Martin Tutwiler, securities for John K. Sheperson, who contracted with said directors for the erection and completion of an additional building to the said asylum, and who failed to complete the same according to contract, for the sum of two thousand dollars, being so much allowed to them in advance upon the remaining instalment, to enable them to complete such additional building; said sum to be paid to Hart and Tutwiler, so soon as they shall have executed their bond with approved security, made payable to the directors aforesaid, and conditioned for the true and faithful appropriation of the said sum of two thousand dollars, and for the completion of said additional building, according to the terms of the contract entered into between the said Sheperson and the aforesaid directors of the Eastern lunatic asylum at Williamsburg. And in making said requisition upon the auditor, the said directors shall certify that said bond has been duly executed in accordance with the provisions of this act.

2. This act shall be in force from the passing thereof.

CHAP. 11.—An ACT making an appropriation for the Eastern lunatic asylum.

[Passed February 14, 1844.] 16

1. *Be it enacted by the general assembly*, That the sum of five thousand dollars be, and the same is hereby appropriated for the purpose of remodelling and repairing the body of the old building of the Eastern lunatic asylum at Williamsburg, to be paid to the treasury of said asylum, on the requisition of the board of directors thereof, at any time after the first day of July next; and the auditor of public accounts is hereby authorized and required, on the requisition of said board, at any time after the said first day of July, eighteen hundred and forty-four, to issue his warrant on the treasury of the commonwealth, in favour of the treasurer of said asylum, for the amount above mentioned.

2. *And be it further enacted,* That before the repairs mentioned in the preceding section shall be contracted for, the said board of directors shall advertise the time and place of letting out the same, and shall let out the same to the lowest bidder, taking bond and good security of the contractor or contractors for the due execution of the contract; and the terms of the contract shall not be altered after being entered into, without the previous consent of the general assembly: *Provided however,* That said board may let out the work hereby provided for in one contract, or may let it out in two or more contracts, as to them may seem proper.

CHAP. 12—An ACT to authorize the enlargement of the lunatic asylums of the commonwealth.

[Passed January 17, 1848.] 16

1. *Be it enacted by the general assembly,* That the directors of the Western asylum for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice by advertisement in some public newspaper published in the city of Richmond and in the newspapers published in the towns of Staunton and Winchester, that they will receive proposals for the work authorized; and on letting out of said work they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

2. That a sum not exceeding thirty-six thousand dollars be and the same is hereby appropriated for the entire completion of the additional buildings hereby authorized, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Western asylum, in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: Seven thousand dollars on the ratification of the contract and the execution of the bond required; seven thousand dollars on the first of July, eighteen hundred and forty-eight; seven thousand dollars on the first of January, eighteen hundred and forty-nine; seven thousand dollars on the first of July, eighteen hundred and forty-nine, and eight thousand dollars on the first of January, eighteen hundred and fifty: *Provided,* That said buildings shall be completed on the day last aforesaid; if not, then upon the completion thereof.

3. *Be it further enacted,* That the directors of the Eastern asylum

for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice by advertisement in some public newspaper in each of the cities of Richmond, Petersburg and Norfolk, that they will receive proposals for the work authorized; and on letting out of said work, they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

4. *Be it further enacted,* That a sum not exceeding twenty-five thousand dollars be and the same is hereby appropriated for the entire completion of the additional buildings in said last section authorized, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum in favour of the treasurer thereof, on the auditor of public accounts, in
the following manner: Five thousand dollars on the ratifica- 17
tion of the contract and the execution of the bond required;
five thousand dollars on the first of July, eighteen hundred and forty-eight; five thousand dollars on the first of January, eighteen hundred and forty-nine; five thousand dollars on the first of July, eighteen hundred and forty-nine, and five thousand dollars on the first of January, eighteen hundred and fifty: *Provided,* That said buildings shall be completed on the day last aforesaid; if not, then upon the completion thereof.

5. This act shall be in force from its passage.

CHAP. 13.—An ACT providing for the purchase of furniture for the Eastern and Western asylums, and for other purposes.

14

[Passed January 13, 1849.]

1. *Be it enacted by the general assembly,* That a sum not exceeding eight thousand five hundred dollars be and the same is hereby appropriated for the purchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Western asylum for the maintenance and cure of insane persons, and of such clothing as may be necessary for the additional number of patients to be admitted into said asylum; and that said sum
of money be paid out of the treasury of the commonwealth, 15
upon the order of the court of directors of said Western

asylum, in favour of the treasurer thereof, on the auditor of public accounts.

2. *Be it further enacted,* That a sum not exceeding six thousand two hundred and sixty-six dollars be and the same is hereby appropriated for the purchase of furniture for the additional building referred to in the report of the directors of the Eastern asylum for the maintenance and cure of insane persons, and of such clothing as may be necessary for the additional number of patients to be admitted into said asylum, and to pay the excess of the price of the buildings contracted for by said directors, over and above the appropriation of the last session; and that said sum of money be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum, in favour of the treasurer thereof, on the auditor of public accounts.

3. This act shall be in force from its passage.

CHAP. 17.—An ACT providing for the payment of arrears on buildings, and furnishing water and additional accommodations for free colored insane persons at the Eastern lunatic asylum.

[Passed January 22, 1850.] 16

1. *Be it enacted by the general assembly,* That for the purpose of paying arrears on building account at the Eastern lunatic asylum for the maintenance and cure of insane persons, to provide additional accommodations for free colored insane persons, to purchase furniture for the new building now being erected, and to furnish the said asylum with a sufficient supply of water, the sum of eleven thousand five hundred dollars be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated; and the auditor of public accounts is hereby directed to draw his warrant on the treasury in favor of the treasurer of the said Eastern asylum, upon the order of the board of directors of said asylum, authorizing him to receive the same, for the said sum of eleven thousand five hundred dollars, to be applied by the said directors to the purposes aforesaid.

2. This act shall be in force from its passage.

CHAP. 144.—An ACT appropriating seven thousand dollars for repairing and erecting buildings at the Eastern lunatic asylum.

[Passed January 21, 1853.] 126

1. Be it enacted by the general assembly, that the directors of the Eastern asylum for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for repairing or rebuilding the granaries, stables and other out-houses of the institution, and for remodeling the building used for colored patients, after having first given at least sixty days' notice by advertisement in some newspaper published in the city of Richmond, and a paper published in the city of Norfolk, that they will receive proposals for the work authorized; and on letting out the said work, they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they may deem sufficient, conditioned for the faithful execution of the contract.

2. That the sum of seven thousand dollars be and the same is hereby appropriated for the completion of the buildings and other work hereby authorized, and for the purchase of the Six-Chimney lot recently made by the directors of the Eastern lunatic asylum; to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum, in favor of the treasurer thereof, on the first auditor, in the following manner: Six hundred and sixty-one dollars for the purchase of the lot hereinbefore mentioned; eighteen hundred and thirty-nine dollars on the ratification of the contract and the execution of the bond required; two thousand five hundred dollars after the work shall have been half completed, and two thousand dollars on the completion of the contract hereby authorized.

3. This act shall be in force from its passage.

CHAP. 39.—An ACT appropriating seventeen thousand seven hundred and fifty dollars for erecting and repairing buildings and enclosures at the Eastern lunatic asylum; for purchasing a lot of land for the use of the asylum, for improving its grounds, for providing furniture and other conveniences for the same, and for lighting the institution with gas.

[Passed March 1, 1854.] 29

1. Be it enacted by the general assembly, that the sum of eleven thousand seven hundred and fifty dollars be and the same is hereby

appropriated for erecting and repairing buildings and enclosures at the Eastern lunatic asylum, for purchasing a lot of land for the use of the asylum, for improving its grounds and for providing furniture and other conveniences for the same; which sum shall be paid out of the treasury of the commonwealth upon the order of the court of directors of the said asylum, in favor of the treasurer thereof, on the auditor of public accounts, in the following manner, to-wit: three thousand seven hundred and fifty dollars on the first day of July next; four thousand dollars on the first day of January next, and four thousand dollars on the first day of July, eighteen hundred and fifty-five.

2. Be it further enacted, that the directors of the said asylum be and they are hereby empowered to contract for the lighting of that institution with gas, after having given at least sixty days' notice by advertisement in the Virginia Gazette, in some newspaper published in the city of Richmond, and in one other newspaper, to be selected by them, that they will receive proposals for the construction of the fixtures and works necessary for the purpose. The said directors shall, on letting out the work, take bond with approved security from the contractor or contractors, payable to the said directors and their successors in office, in such penalty as they may deem sufficient, and with the condition that the contract be faithfully executed. For this purpose, the sum of six thousand dollars is hereby appropriated, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of the said asylum, in favor of the treasurer thereof, on the auditor of public accounts, in the following manner, viz: Two thousand dollars on the ratification of the contract and the executing of the bond aforesaid; two thousand dollars when the work shall have been, in the estimation of the said directors, half completed, and two thousand dollars on the completing of the work according to the contract.

3. This act shall be in force from its passage.

Western Asylum at Staunton.

CHAPTER 35.—An act to authorise the establishment of a Western Lunatic Hospital.

[Passed January 22d, 1825.] 30

Whereas it appears to the General Assembly, that the present public hospital for persons of unsound minds, is insufficient for the reception and cure of all such unfortunate persons:

1. *Be it therefore enacted,* That John S. Barnes, of the county of Monongalia, Joel Shrewsbury, senior, of the county of Kanawha, Briscoe G. Baldwin, of the county of Augusta, John B. George, of the county of Tazewell, and Allen Taylor, of the county of Botetourt, be, and they are hereby appointed commissioners, for the purpose of selecting a site for the erection of a lunatic hospital on the west side of the Blue Ridge. It shall be the duty of the said commissioners or a majority of them, to meet at Lewisburg, on the first day of April next, or as soon thereafter as practicable, and shall forthwith proceed to execute the duty required by this act, and make report thereof to the Executive of this Commonwealth. In case of the death, or refusal to act, or inability of the said commissioners, or either of them, the Governor with advice of council shall be, and he is hereby authorised to supply such vacancy or vacancies. The said commissioners shall be entitled to receive four dollars each per day, for every day they shall be employed in carrying into effect the provisions of this act.

2. When the said commissioners shall have made the selection and report as aforesaid, the Executive shall forthwith appoint a court of directors, consisting of thirteen persons as convenient to the place selected as may be, who shall be, and they are hereby constituted and appointed, with their successors to be chosen when vacancies happen by the Executive, a body politic and corporate, to have perpetual succession by the name of "The Directors of the Western Hospital of Virginia, for the maintenance and cure of persons of unsound mind," and by that name may sue and be 31 sued, and may and shall have and use a common seal, and are enabled to take any estate real or personal, given or to be given to the said hospital or to themselves for the use thereof; so as the annual income of such donations, shall not exceed the sum of three thousand dollars; any law or statute to the contrary notwithstanding.

3. The said directors shall and may, so often as it may be necessary, choose a president, to continue in office until his death, resignation or removal; and they or any seven of them shall form a court, and shall from time to time ordain regulations for the government of the said hospital, and appoint a keeper and matron thereof, with nurses and guards when they shall be necessary; and provide for the accommodation, maintenance and cure of the patients received, or to be received therein: *Provided, nevertheless,* That any five of the said directors shall form and constitute a court for the examination of idcots and lunatics, and shall have power as may seem to them best to receive or reject any applicant.

4. The said directors, or any seven of them, shall be and they are hereby empowered to purchase a piece or parcel of land not

exceeding four acres, the most healthy in situation that can be procured, and as convenient as may be, to the site selected by the commissioners appointed under this act; and to contract for the building thereon, a commodious house or houses, fit for the reception and accommodation of persons of unsound minds, having previously given public notice by advertisement published in the Richmond Enquirer, and in some newspaper published in Staunton for sixty days, that they will receive proposals for the building thereof, and shall take bond with sufficient security, from such person or persons, in the penal sum of twenty thousand dollars, payable to themselves and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of the said directors. The said directors shall have full power from time to time, to order and direct their treasurer to draw upon the treasurer of this Commonwealth, (which shall be audited by the Auditor of Public Accounts,) for such sums of money, including the cost of the site aforesaid, as may be necessary to defray the expenses of said building or buildings; which shall be paid out out of any money in the treasury not otherwise appropriated: *Provided*, That the whole expense thereof, shall not exceed the sum of ten thousand dollars.

5. When the said hospital shall have been erected, the expenses thereof shall be provided for and paid in the same manner, that the expenses of the present hospital are provided for and paid; the jurisdiction, powers and duties of the directors and keepers of both the said hospitals shall in all respects be the same; the proceedings by magistrates and courts concerning the examination of persons of unsound minds, or those supposed to be so, and their removal to the hospital hereby established, shall in all respects be the same as are now required or observed in examining such persons, and removing them to the present hospital; and the persons and estates of persons who may be removed to the hospital hereby established, shall be in the same condition, and subject to the same laws, as are now in force in relation to the persons and estates of those removed to the present hospital.

6. The court of directors shall have power to appoint a clerk, attending physician and treasurer; to each of whom they may make a reasonable compensation for their services. The 32 treasurer, (who shall not be a member of the court of directors,) shall be appointed annually, and shall be required, before entering on the duties of the office, to give bond with approved security, in the penalty of twenty thousand dollars, payable to the president and directors and their successors in office, conditioned for the faithful discharge of the duties of his office, and for the settlement of his accounts before the said court of directors, once in six

months; which accounts the said court of directors are hereby required to cause to be certified to the auditor, to be audited as other public accounts. And the said court of directors, shall have power and authority to draw through their treasurer for the whole amount, or any part of the annual appropriation, for which draft or drafts when presented, the auditor of public accounts is hereby authorised and required to issue a warrant on the treasury: *Provided however*, That no such draft made upon the appropriations of one year, shall be allowed, until all monies drawn on account of the appropriations of one year next preceding, shall have been duly accounted for by the treasurer of the hospital.

7. The said directors shall, so soon as the hospital hereby established, shall be finished, give notice thereof by advertisement in some paper printed in the city of Richmond, to be published thirty days; a copy whereof shall be sent, under the direction of the Executive, to every county and corporation court of this Commonwealth; upon the receipt whereof, it shall be the duty of all magistrates or courts, having custody of or jurisdiction over persons of unsound mind, to have all such as may be confined in the county jails or elsewhere, (for want of room in the present public hospital,) removed to the hospital hereby established. And in all cases that may afterwards occur west of the Blue Ridge, wherein it may be necessary to remove persons of unsound mind, they shall be removed to the hospital hereby established, so long as it can conveniently receive them. If it be full, they shall be sent to the hospital now at Williamsburg. And, so long as the latter hospital cannot conveniently receive any persons that may be sent to it, such persons shall be sent to the hospital hereby established, from whatever part of the Commonwealth they may come. When the hospital at Williamsburg can conveniently receive them, all such persons east of the Blue Ridge shall be sent thither.

8. All acts and parts of acts coming within the purview of this act, shall be and the same are hereby repealed.

9. This act shall be in force from and after the passing thereof.

CHAPTER 4—An act making farther appropriation for the completion of the Western Lunatic Hospital.

[Passed February 24th, 1827.] 9

1. *Be it enacted by the General Assembly*, That the sum of twelve thousand dollars be, and the same is hereby appropriated

out of any money in the Treasury, not otherwise disposed of, toward the completion of the Western Lunatic Hospital, to be paid by instalments, as the progress of the work may require: And the Auditor of Public Accounts is hereby required to issue a warrant on the Treasury, to the order of the Court of Directors for the said hospital, for such sum as the said court may from time to time deem necessary, so as not to exceed the appropriation aforesaid.

2. *Be it further enacted,* That the said Directors shall not enter into any contract whatever, beyond the sum hereby appropriated.

3. This act shall commence and be in force from and after the passing thereof.

CHAPTER 7.—An act concerning the Western Lunatic Hospital.

[Passed February 28th, 1828.] 9

Whereas, it is represented to this General Assembly, by the court of directors of the Western Lunatic Hospital, that the land purchased by them is not sufficient for the humane purposes of the institution:

1. *Be it therefore enacted,* That the said court of directors be, and they are hereby authorised, if they shall deem it expedient, having a due regard to economy, to procure by purchase, an additional quantity of land, adjoining the present lot, not exceeding six acres: But if they, the said president and directors of the Western Lunatic Hospital, shall be unable to procure the said quantity of land, situate as aforesaid, on terms by them deemed fair and reasonable, they may proceed to have the same condemned for the purpose aforesaid, by applying to the county court of Augusta, for a writ of ad quod damnum: having given ten days previous notice to the proprietor thereof, if he be found in the county, and if not, then to his agent, if any he hath, which court shall thereupon order their clerk to issue such writ, to be directed to the sheriff, commanding him to summon and impannel twelve fit persons, to meet upon the lands so proposed to be condemned for the use of the said Hospital, on a certain day to be named by the court, and inserted in the said writ, of which notice shall be given by the sheriff to the proprietor or his agent as before directed. The freeholders taken, shall be charged by the said sheriff impartially and to the best of their skill and judgment, to view the lands so situate as aforesaid, and to locate and circumscribe by certain metes and bounds six acres thereof, or any smaller quantity, as desired by the said president and directors, and to appraise the same according to its true value. The inquest so made and sealed by the said jurors, together with the said writ,

shall by the said sheriff be returned to the succeeding court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the lands so located, to shew cause why the same shall not be condemned for the use aforesaid. If on such inquest, or other evidence, it shall appear to the court, that the valuation of the said lands, has been just and reasonable, and the location has been properly made, they shall order the same to be recorded, whereupon the said president and directors of the Western Lunatic Hospital, shall out of any funds which are or may be appropriated for the completion of the said Hospital, make payment of such assessed valuation, to the proprietor or proprietors thereof, according to the said inquest, and the land so located shall vest in the Commonwealth absolutely, for the uses and purposes aforesaid.

2. This act shall commence and be in force from and after the passage thereof.

CHAPTER 6.—An act amending the acts concerning idiots and lunatics, to provide for clothing the public guard, and for other purposes.

(Passed February 17th, 1830.)

* * * * *

5. *Be it further enacted,* That the directors of the Lunatic Hospital at Staunton be and they are hereby authorised to cause the buildings of that asylum, with the lot, to be enclosed with a suitable wall of stone or brick, in their discretion, for which purpose the sum of five thousand dollars shall be and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated.

See Act March 1st, 1833, Chap. 29, under "Eastern Asylum at Williamsburg," supra.

See Act March 12, 1834, Chap. 19, under "Eastern Asylum at Williamsburg," supra.

See Act March 12, 1835, Chap. 17, under "Eastern Asylum at Williamsburg," supra.

CHAP. 8.—An ACT appropriating a further sum of money for completing the improvements of the Western lunatic hospital.

(Passed March 22, 1836.) 9

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money, in addition to the sums heretofore appropriated for the same purposes, as may be necessary to fulfil their contracts for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the act of March the twelfth, eighteen hundred and thirty-five: *Provided*, That said further sum hereby appropriated shall not exceed six thousand dollars.

2. This act shall be in force from its passage.

See Act of March 31, 1837, Chap. 19, under head "Eastern Asylum at Williamsburg," supra.

See Act April 3rd, 1838, Chap. 21, under head "Eastern Asylum at Williamsburg," supra.

CHAP. 17.—An ACT concerning the lunatic asylums of this commonwealth.

[Passed April 10, 1839.] 14

1. *Be it enacted by the general assembly*, That the directors of the western lunatic hospital shall be, and they are hereby authorized to contract for conducting an ample supply of good spring water to the said hospital in iron pipes, without use of forcing pumps or other machinery, from some point sufficiently elevated to allow the water to be conducted into the upper story of the principal building of said hospital, and for the purpose of defraying the expense thereof, 15 the said directors are hereby empowered to direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for any sum not exceeding five thousand dollars, in addition to the sum heretofore appropriated for that purpose.

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CHAP. 18.—An ACT providing for paying the workmen for completing the additional building to the Western lunatic asylum.

[Passed March 8, 1842.] 16

1. *Be it enacted by the general assembly,* That the sum of nine thousand and sixty dollars and forty-four cents be, and are hereby appropriated out of any money in the treasury, to discharge in full, including any claim for interest, the debt due from the commonwealth to the workmen for completing the additional building to the Western lunatic asylum; and the court of directors of that institution are authorized to direct their treasurer to draw on the treasurer of this commonwealth for the same.

2. This act shall be in force from the passing thereof.

See Act of March 25th, 1842, Chap 19, under head "Eastern Asylum at Williamsburg," supra.

See Act Feb. 12, 1844, Chap. 10, under head "Eastern Asylum at Williamsburg," supra.

CHAP. 17.—An ACT concerning the Western lunatic asylum at Staunton.

19

[Passed March 4, 1846.]

Whereas it is represented to the general assembly by the president and directors of the Western lunatic asylum, that the interests of that institution would be greatly promoted by the acquisition of an additional quantity of land:

1. *Be it therefore enacted,* That the court of directors of the said asylum be and they are hereby authorized to procure by purchase an additional quantity of land, adjoining the lands belonging to said asylum, not exceeding one hundred and twenty acres. But if the said directors shall be unable to secure the said quantity of land, situate as aforesaid, on terms deemed by them reasonable, they may proceed to have the same condemned, or so much thereof as they may deem necessary for the purpose aforesaid, by applying to the county court of Augusta, who are hereby authorized and required to appoint five fit and discreet freeholders of said county, who after being first

duly sworn for that purpose, before some justice of the peace for said county; and after having given at least ten days previous notice to the owner or owners of such land, their agent or attorney, shall, on such day as they may appoint, go upon the lands which the directors of said asylum may require to be condemned for the use of the same, and value the same at cash price, according to the best of their skill and judgment, and after they shall have ascertained the value of such land or lands as they may be required to condemn, shall make report to the next court for the said county, who shall, on the return thereof, direct summons to issue to the several persons, proprietors or tenants of the lands so condemned for the use aforesaid, returnable to the first term thereafter. And if on the return of such summons, the party on whom the same has been executed, shall fail to appear and contest the same, the said county court shall confirm the said report or reports; and on payment of the valuation of such land or lands to the person or persons entitled to the same, the said land or lands shall be fully vested in the directors of the said asylum for the time being, and their successors in office forever. But if the owner or owners of said land or lands, or either of them, shall appear and contest said report, the said county court shall hear and determine the same in the same manner as is now prescribed by law in cases of writs of *ad quod damnum*, awarded on the report of viewers of a road. And the proceedings under this act subsequent to the return of the report of the commissioners aforesaid, shall in all things conform to the proceedings in cases of roads: *Provided, however*, That in proceeding to make condemnation of the necessary quantity of land, it shall not be lawful to interfere with the private residence, garden or yard of the individual, whose land it may be necessary to condemn.

2. *Be it further enacted*, That the sum of four thousand dollars be and the same is hereby appropriated, for the purpose of carrying into effect the object of this act, out of any money in the treasury not otherwise appropriated. And the president and directors of the Western lunatic asylum are hereby authorized to draw on the auditor of public accounts for the said sum of four thousand dollars, as soon as it may be necessary for them to pay for any land or lands acquired under this act.

3. This act shall be in force from the passing thereof.

See Act Jan. 17, 1848, Chap. 12, under head, "Eastern Asylum at Williamsburg," supra.

See Act Jan. 13, 1849, Chap. 13, under head, "Eastern Asylum at Williamsburg," supra.

CHAP. 16.—An ACT for providing for the erection of necessary out-buildings at the Western asylum, and requiring that the funds of said asylum shall be kept in the Valley Bank at Staunton.

[Passed January 19, 1850.]

1. *Be it enacted by the general assembly*, That for the purpose of erecting at the Western asylum for the maintenance and cure of insane persons, a plain and substantial building, to contain a kitchen, bakery, pantry, store-rooms, dining-room, chapel, clothes-rooms, medicine and library-rooms, and other rooms rendered necessary by the great enlargement of said asylum by previous acts of the general assembly, the sum of fourteen thousand five hundred dollars be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, and that the auditor of public accounts draw two warrants on the treasury in favor of the treasurer of said Western asylum, each for seven thousand two hundred and fifty dollars, the first payable the first of July, eighteen hundred and fifty, and the second payable the first of January, eighteen hundred and fifty-one, together making the said sum of fourteen thousand five hundred dollars; that sum being sufficient, in the opinion of the directors of said asylum, to complete entirely the necessary out-buildings, in conformity with the present enlarged plan of said asylum.

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CHAP. 36.—An ACT appropriating the sum of five thousand dollars to construct fixtures and apparatus for lighting the Western lunatic asylum with gas.

[Passed February 25, 1852.]

1. *Be it enacted by the general assembly*, That the sum of five thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of constructing suitable fixtures and apparatus for lighting the Western lunatic asylum with gas, and that said sum of money be drawn from the treasury, upon the warrant of the auditor of public accounts, in favor of the directors of said Western lunatic asylum.

2. This act shall be in force from its passage.

CHAP. 40.—An ACT appropriating thirty-four thousand one hundred and eighty-eight dollars to heat the buildings of the Western lunatic asylum by steam, to erect covered connections and verandahs, and to enclose the grounds of said asylum.

29

Passed March 1, 1854.

1. Be it enacted by the general assembly, that there be and there is hereby appropriated out of the treasury of the commonwealth the sum of thirty-four thousand one hundred and eighty-eight dollars, to be paid on the orders of the board of directors of the Western lunatic asylum, to be applied by said board as follows: Fifteen thousand dollars, part thereof, to the heating by steam of the buildings of said asylum; nine thousand one hundred and fifty dollars, another part thereof, to the erection of covered connections and verandahs between the said buildings, and ten thousand and thirty-eight dollars, the residue thereof, to the enclosing of the grounds of said asylum: one-half of said aggregate sum of thirty-four thousand one hundred and eighty-eight dollars to be paid during the present fiscal year, and the remaining half of said sum during the next succeeding fiscal year.

2. This act shall be in force from its passage.

CHAP. 166.—An ACT appropriating the sum of ten thousand dollars to procure a supply of water for the Western lunatic asylum.

Passed March 19, 1858. 116

1. Be it enacted by the general assembly, that the sum of ten thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of procuring a supply of water for the Western lunatic asylum, and that the said sum of money be drawn from the treasury upon the warrant of the auditor of public accounts in favor of the directors of the said Western lunatic asylum; one-half in the present fiscal year, and the other half in the next succeeding fiscal year.

2. Be it further enacted, that the directors of said asylum be and they are hereby authorized and empowered to contract with the owner of any springs and land which may be deemed proper for the said supply of water, for the purchase of such springs and land as may be necessary adjacent to the same, not exceeding half an acre, and for such rights of way and other privileges as may be requisite for the purposes contemplated by this act; and in the event that they cannot agree with the proprietors of said springs and land for the purchase of the same and the necessary rights of way and other privileges, the

said directors are hereby authorized to proceed, in the mode indicated in sections six to eleven, inclusive, of chapter fifty-six of the Code, to obtain title to the same.

3. This act shall be in force from its passage.

CANNON HOUSE IN SURRY COUNTY.

CHAPTER 98.—An act concerning John Peter.

(Passed February 20th, 1824.) 101

1. *Be it enacted by the General Assembly*, That the auditor of public accounts shall be, and he is hereby authorised and required to issue a warrant on the public treasury in favor John Peter of the county of Surry, for the sum of one hundred and ten dollars, (being a balance due said Peter for the erection of a cannon-house, for the seventy-first regiment,) to be paid to the said Peter or his legal representative, out of any money therein not otherwise appropriated.

2. This act shall commence and be in force from the passing thereof.

GUN HOUSE RICHMOND ARTILLERY.

CHAP. 21.—An ACT to amend the several laws concerning the militia of this commonwealth, and for other purposes.

(Passed March 11, 1835.) 21

* * * * *

6. *Be it further enacted*, That the governor be, and he is here- 22
by authorized to furnish immediately to the Richmond Fayette and Portsmouth artillery companies, and from time to time to any other companies of artillery in the state, which may be furnished with cannon, and shall require the same, as many caissons and other needful equipments as, in his opinion, may be necessary and proper; and cause, where they may be necessary, suitable houses or shelters to be erected for the preservation and safe keeping of such caissons and cannon, with their necessary equipments; and also to arm and equip any troop or troops of cavalry, if he shall deem it expedient to do so. Any expense which may be incurred in pursuance of the provisions of this act, shall be defrayed out of any money in the treasury not otherwise appropriated.

JOINT RESOLUTIONS OF THE WEST VIRGINIA LEGISLATURE RELATING TO THE VIRGINIA DEBT QUESTION.

HOUSE JOINT RESOLUTION NO. 10, CONCERNING THE VIRGINIA DEBT.

(Adopted February 7th, 1895.) 494

Resolved by the Legislature of West Virginia:

That this Legislature hereby declines to enter into any negotiaton with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

HOUSE JOINT RESOLUTION NO. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiation on that subject.

(H. J. R. No. 6)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1899)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purpose the consideration of the same; and that it is the sense of this legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

JOINT RESOLUTION NO. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia: 495

That this legislature declines or refuses to take any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject. And, *further*, that this legislature declines, and most emphatically refuses, to take any action in regard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that is the sense of this legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other state or territory in this Union.

(H. J. R. No. 7.)

JOINT RESOLUTION NO. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the state of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject.

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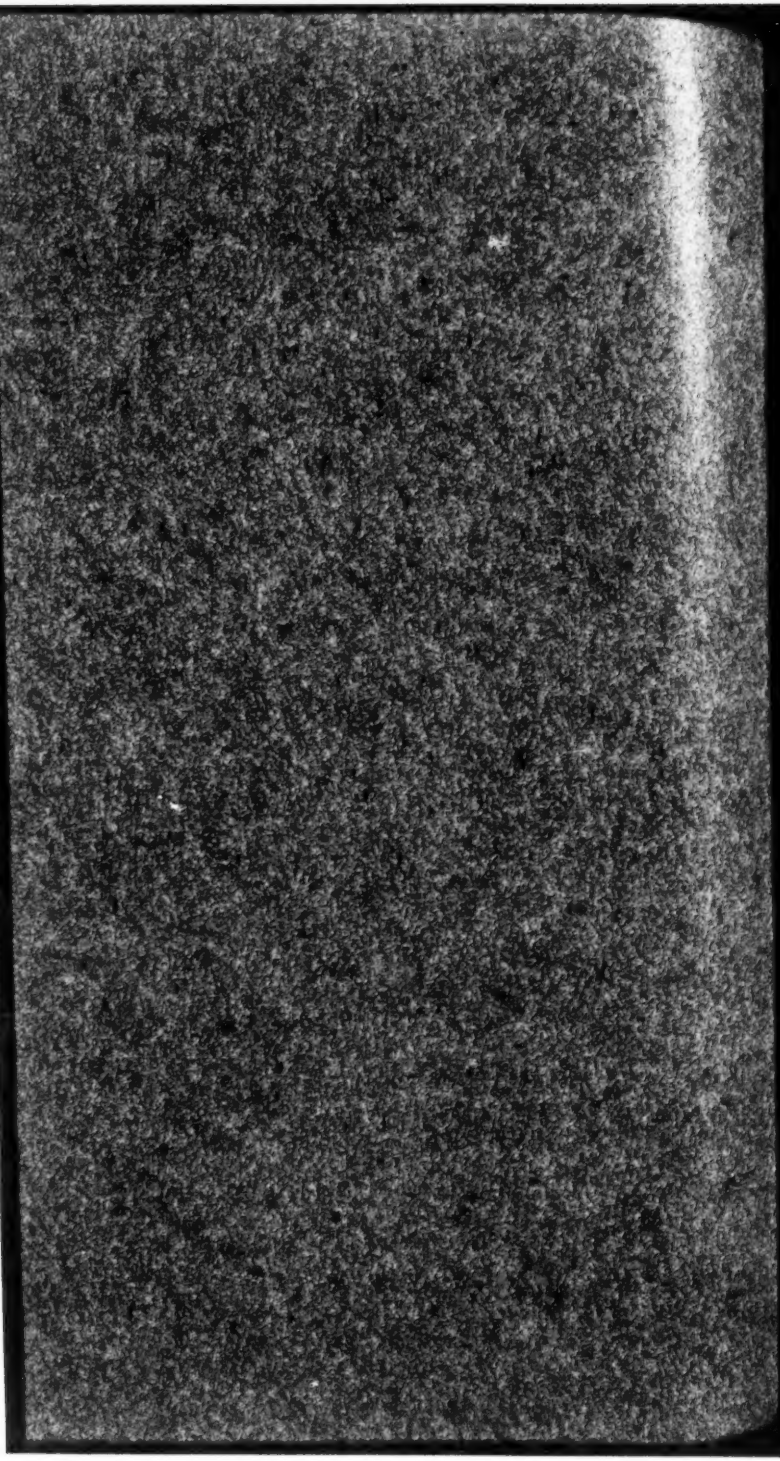
9047
S2

2 Orig.

Commonwealth of Virginia

vs.

State of West Virginia



In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT A-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT A-1

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Chartered Accountants
60 William Street, New York
For the Plaintiff

THOMAS REID DIXEY
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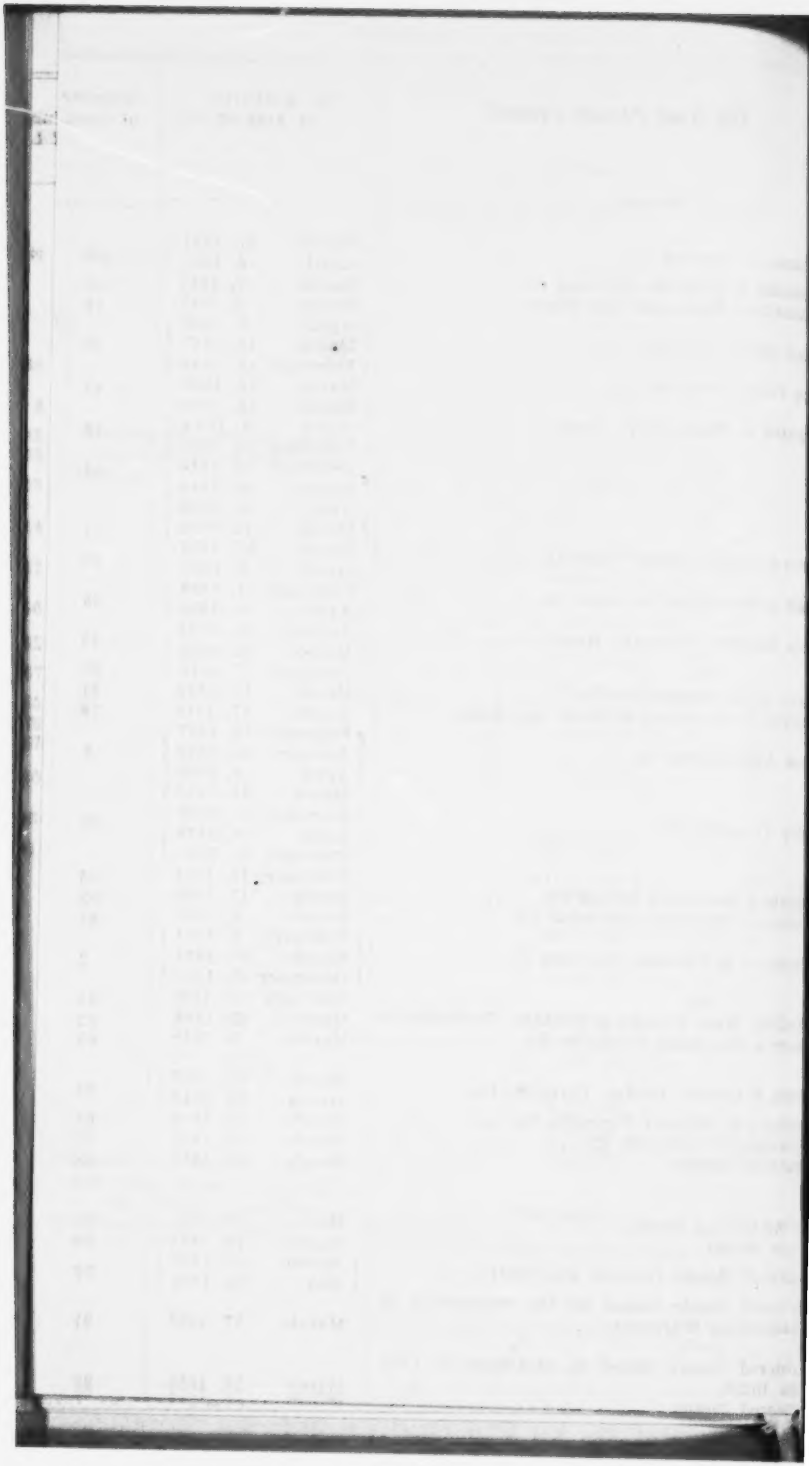
30 Church Street, New York
For the Defendant

FOLD OUT IS TOO LARGE TO BE FILMED



PLAINTIFF'S EXHIBIT A-2

[The forms of Bonds which follow, 101 in number, Constitute the one Exhibit.]

Following are copies of the forms of the various bonds covered by this Exhibit arranged numerically with the following exceptions:

Loan Nos. 18, 20, 31, 32, 39, 53, 57, 58, 68, 70, 73, 78, 80, 82, 87, 90, 91, and J. R. 5, 6, 7, 8, 9, 10, 11.

No cancelled bonds for these issues were found filed with the Treasurer of Virginia.

Loan No. 2.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes; another Act passed on the 10th day of March, 1834, entitled, An Act to amend the charter of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX

per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of March 1839, entitled, "An Act to authorize a further increase of the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of January 1834, entitled "An Act to increase the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

and to authorize a subscription thereunto on behalf of the State, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1837, entitled "An Act to authorize the Board of Public Works to subscribe to two-fifths of the increased Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day above written.

$

LOAN No. 4.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd day of January, 1835, entitled, An Act authorizing the Board of Public Works to subscribe on behalf of the Commonwealth to the stock of the

RICHMOND FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1837, entitled, An Act to authorize a subscription on behalf of the State to the Stock of the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, of the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 25th day of February 1837, entitled, "An Act to authorize a subscription on behalf of the State of the stock of the

LOUISA RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th March 1838, entitled, An Act to authorize the

LOUISA RAILROAD COMPANY

to construct a railroad from some point on the line of their railroad to Charlottesville, and for other purposes, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of February 1837, entitled "An Act to authorize the

DISMAL SWAMP CANAL CO.

to increase their Capital Stock and to authorize the loans of the State to said Company to be converted into Stock", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 21st day of March 1837, entitled "An Act to amend the Act entitled an Act to provide for the construction of a road from

PRICES TURNPIKE TO CUMBERLAND GAP

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly, passed on the 2nd day of April 1839, entitled An Act to provide for the completion of that part of the road from

PRICES TURNPIKE TO CUMBERLAND GAP

which passes through the County of Lee" and a supplementary Act of 28th February 1842—the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of any Act of the General Assembly of the Commonwealth of Virginia passed on the 8th day of March 1842, entitled "An Act to amend the Act passed January 22nd 1838, entitled, an Act to authorize the county courts of the counties of

BOTETOURT, TAZEWELL, GILES, RUSSELL, MERCER, SCOTT & LEE

to borrow money for certain purposes." The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 9.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

UPPER APPOMATTOX COMPANY.

The principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 11.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the twenty-first day of March eighteen hundred and thirty-seven, entitled "An Act providing for the payment of the Subscription of the State to

THE JAMES RIVER and KANAWHA COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th day of March 1836, entitled "An Act concerning

THE RAPPAHANNOCK COMPANY"

and of an Act concerning the States subscription to

THE RAPPAHANNOCK COMPANY"

passed the first day of March 1838 the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person, or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 4th March 1836 entitled, An Act concerning the

RAPPAHANNOCK COMPANY" and Act passed March 1st 1838

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 13.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1838, entitled An Act to repeal in part the fourth section, the Act entitled An Act to amend the several Acts concerning the

PETERSBURG RAIL ROAD COMPANY"

and for other purposes", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 14.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 31st day of March 1838, entitled, "An Act authorizing a loan on behalf of the state, to the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 15.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 13th February 1838

"WINCHESTER AND POTOMAC RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th March, 1838, entitled "An Act to provide for the Construction of a

TURNPIKE ROAD FROM STAUNTON TO PARKERSBURG"

and the third section of "An Act to provide for raising loans heretofore made to certain

RAILROAD COMPANIES

and for other purposes," passed 21st March 1839, the said loan to be redeemable at the expiration of twenty years from the day of , and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th February 1845, entitled, An Act for completing the

STAUNTON AND PARKERSBURG ROAD,"

and of An Act passed on the 8th April 1839 authorizing Loans for the payment of certain subscriptions and appropriations"; the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 17.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th day of March 1838, entitled "An Act to provide for the payment of the States subscription to the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY"

and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 19.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th day of March 1837, entitled, "An Act to au-

thorize a further subscription on behalf of the State to the Stock of the

RIVANNA NAVIGATION COMPANY"

as amended by an Act passed the 4th day of April 1838. The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 21.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1838, entitled, An Act concerning the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations",

VALLEY TURNPIKE COMPANY

Act 14th February 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth of Virginia aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of

Virginia passed on the 24th March 1838, entitled, An Act to provide for the construction of a road from

WINCHESTER TO STAUNTON

and for other purposes and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th February 1839, entitled, "An Act Concerning the

VALLEY TURNPIKE COMPANY"

and "An Act authorizing Loans for the payment of certain subscriptions and appropriations" passed 8th day of April 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 28th day of March, 1838, entitled, "An Act incorporating the

INDIAN DRAFT TURNPIKE COMPANY

(for the Red and Blue Sulphur Springs Turnpike Company) the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing loans for the payment of Certain Subscriptions, and Appropriations"

and An Act passed 23rd day of March 1839, entitled, An Act authorizing subscriptions on behalf of the Commonwealth to the original and additional Capital Stock of the

RED AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 24.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of April, 1839, entitled, an ACT authorizing a loan on behalf of the STATE to the

CITY POINT RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 25.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the second day of April 1839, entitled "An Act providing for the State's subscription to the Stock of the

PITTSYLVANIA, FRANKLIN & BOTETOURT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of 18 and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 26.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an ACT of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled "AN ACT authoriz-

ing loans for the payment of certain subscriptions and appropriations."

"NATURAL BRIDGE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 27.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the First of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839.

"DRAGON SWAMP NAVIGATION CO."

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 28.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "AN ACT" authorizing Loans for the payment of Certain Subscriptions and Appropriations.

HOLLIDAYS COVE TURNPIKE COMPANY

The principal whereof is irredeemable Twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 29.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled AN ACT authorizing Loans for the payment of certain subscriptions and appropriations

CACAPON AND NORTH BRANCH TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 30.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled An Act authorizing Loans for the payment of certain subscriptions and appropriations"

SALEM AND PEPPERS' FERRY TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 33.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839.

"LEWISBURG AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 34.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, executors, administrators or assigns, the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839 entitled "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

LAFAYETTE AND ENGLISH FERRY TURNPIKE COMPANY

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 35.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 12th day of February 1841, entitled, An Act authorizing the increase of the Capital Stock of the

VALLEY TURNPIKE COMPANY

and for other purposes; the principal whereof is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 36.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, semi-annually, on the first day of January and July, in specie or its equivalent; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of March, 1842, entitled, "An Act authorizing a loan to the

JAMES RIVER AND KANAWHA COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 37.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the eighth day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appro-

priations, "and An Act entitled, "An Act to increase the CAPITAL STOCK of the

LYNCHBURG AND BUFFALOE SPRINGS TURNPIKE COMPANY

etc., for other purposes, passed the 14th day of March 1839. the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate, is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

Loan No. 38.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia unto heirs, administrators, executors or assigns, the sum of Dollars, *being* interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations."

THE SALEM AND NEWCASTLE TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 41.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March, 1847, entitled An Act to authorize the Board of Public Works to purchase two-fifths of the Stock of

THE ALEXANDRIA CANAL COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 42.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing

LOANS for the payment of certain Subscriptions and Appropriations,

GILES, FAYETTE AND KANAWHA TURNPIKE COMPANY.

Act 1st February 1847, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 43.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March 1847, entitled "An Act to provide for the Completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes, the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the Pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 44.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions and Appropriations and An Act passed 8th March 1847, entitled, "An Act to provide for the Construction of a Turnpike Road from the Richlands in Tazewell to the Kentucky Line, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 45.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of March 1847, entitled, "An Act providing for the extension of

LOUISA RAILROAD TO THE EASTERN BASE OF BLUE RIDGE"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 46.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th day of March 1847, entitled, "An Act incorporating the

RICHMOND AND DANVILLE RAILROAD COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of January, 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMOUNT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions, and Appropria-

tions," and an Act passed 14th January 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMONT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 48.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the third day of February 1848, entitled, "An Act authorizing a loan by the Commonwealth to the

RAPPAHANNOCK COMPANY"

the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 49.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th day of January 1848, entitled, "an Act to provide for the extension of the

SOUTH-WESTERN ROAD FROM ITS EASTERN TERMINUS TO THE TOWN OF BUCHANAN"

and also of an Act passed 29th March 1848, "entitled an Act prescribing the mode of raising funds for appropriations from the

PUBLIC TREASURY FOR INTERNAL IMPROVEMENTS",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations" also an Act passed 8th March 1847, entitled an Act to amend the Act passed 5th March 1846 incorporating the

HARDY AND WINCHESTER TURNPIKE COMPANY.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22nd day of February 1848, entitled, "An Act to provide for the completion of the

HARDY AND WINCHESTER TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled An Act to increase the State subscription to the Capital Stock of the

HARDY AND WINCHESTER TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th March 1849.

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th February 1848. Entitled, An Act to provide for Macadamizing the

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

LOAN NO. 52.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act to amend the Act incorporating the

WHEELING WEST LIBRARY AND BETHANY TURNPIKE COMPANY

passed the 20th day of March 1847," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 54.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 2nd February 1848, entitled, An Act making an appropriation for bridges on the

STAUNTON AND PARKERSBURG ROAD"

and also of an "Act passed 29th March 1848," entitled An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvements," the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 55.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1848, entitled "An Act to provide for the completion of the

SOUTHWESTERN TURNPIKE ROAD,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 56.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

LITTLE STONE GAP ROAD

Act 7th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 59.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

HOWARDSVILLE AND ROCKFISH TURNPIKE ROAD

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 60.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations"

ROCKY MOUNT TURNPIKE COMPANY

Act 19th February 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 61.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements"

CLARKSBURG AND BUCHANAN TURNPIKE COMPANY

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 62.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Vir-

ginia, passed on the 15th March 1849, entitled, directing an additional subscription on behalf of the Commonwealth to the Capital Stock of the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 63.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of March 1849, entitled, "An Act to authorize a subscription to the Capital Stock of the

VIRGINIA AND MARYLAND BRIDGE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 64.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849, entitled, "An Act to amend the Act

'INCORPORATING THE ORANGE AND ALEXANDRIA RAILROAD COMPANY,'

passed March 27th 1848," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 65.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations"

MARSHALL AND OHIO TURNPIKE COMPANY. ACT 11TH FEB'Y 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 66.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum, per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th March 1848, entitled, An Act to provide for the construction of the

WESTON AND FAIRMONT TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 67.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations,

MOOREFIELD AND NORTH BRANCH TURNPIKE COMPANY, ACT 10TH MARCH 1848,

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN NO. 71.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 12th day of March, 1849, entitled, "An Act to provide for macadamizing certain parts of the

STAUNTON AND PARKERSBURG ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 72.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain Subscriptions and Appropriations

COAL RIVER NAVIGATION COMPANY ACT 17th MARCH 1849

the principle whereof is irredeemable for twenty years from day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 74.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements

WESTON AND GAULEY BRIDGE TURNPIKE COMPANY. ACT 25th MARCH 1848.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the the Treasury of the Commonwealth aforesaid, on the first day of Jan-

uary and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March, 1849, entitled "An Act to amend the Act passed April 3rd, 1848 ch. 75, concerning the

"NEWMARKET AND SPERRYVILLE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March 1849,

"NEWMARKET AND SPERRYVILLE TURNPIKE CO."

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 76.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled An Act authorizing loans for the payment of certain Subscriptions and Appropriations.

BERRYVILLE AND CHARLESTON TURNPIKE CO., ACT 12TH MARCH 1849.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 77.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th March 1849

"WILLIAMSPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 79.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 5th day of March, 1849, entitled, "An Act to incorporate the

BLUE RIDGE RAILROAD COMPANY

and for other purposes", the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 81.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the Ist day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849 entitled, "An Act authorizing a subscription for the Commonwealth to the Stock of the

VIRGINIA AND TENNESSEE RAILROAD COMPANY",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 83.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th March 1849, entitled, An Act to incorporate the

MOOREFIELD AND ALLEGHANY TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 84.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of March 1849, entitled "An Act amending An Act to incorporate the

SMITH RIVER NAVIGATION COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 85.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled "An Act to incorporate the

MORGANTOWN AND BRIDGEPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN NO. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvement"

OHIO RIVER AND MARYLAND ROAD, ACT 13TH JANUARY 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the public Treasury for internal improvement,

FISHING CREEK AND MORGANTOWN ROAD, ACT 13TH JANUARY 1848.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 88.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22d day of March, 1850, entitled "An Act providing for the

NEGOTIATION OF LOANS FOR THE PURPOSE OF INTERNAL IMPROVEMENT,

the principal whereof is irredeemable for twenty-five years from the , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 89.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of January 1850, entitled "An Act to provide for the completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes", the principal whereof is irredeemable for twenty-five years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN NO. 92.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on first January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 18th March 1856 entitled "An Act providing for and regulating the issue of Certificates of

REGISTERED STOCK

in lieu of Coupon Bonds, the principal whereof is redeemable after the day of (in lieu of Coupon Bond Number issued day of ,returned and cancelled.)

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 93.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1858, entitled, An Act for the relief of certain Internal Improvement Companies and Holders of Debts on account of the

CONSTRUCTION OF STATE WORKS

by an issue of Certificates of State Stock, the principal whereof is irredeemable for thirty-four years from the day of and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN No. 1—REISSUE.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1840, entitled "An Act providing

for the re-issue of certificates of State Stock due the Bank of Virginia"

J. R. Co.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. Loan No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

In pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th February 1823 entitled "An Act making more effectual provision to carry into effect the Act, entitled, an Act to amend the Act, entitled, an Act for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western waters, by the James and Kanawha Rivers, and for other purposes;" I, Treasurer of the Commonwealth of Virginia, do hereby certify, that the said Commonwealth is indebted to executors, administrators or assigns, in the sum of Dollars, with interest thereon from the date hereof at the rate of per centum per annum, payable semi-annually at the Treasury of Commonwealth aforesaid; the principal whereof is irredeemable for 20 years and afterwards to be redeemed at pleasure of General Assembly.

This Certificate is transferable on the books of the Second Auditor, by proprietor or proprietors, his, her, or their Attorney.

Witness my hand this day of 182

Countersigned.

$

J. L. LOAN No. 4.

TREASURY OFFICE OF VIRGINIA

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an "Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of February 1825, entitled ,"An Act making further provision to carry into effect the Act, entitled, "An Act, for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western Waters, by the James River and Kanawha Rivers, and for other purposes;" the principal whereof is irredeemable for twenty years, and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 1—N. W.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia.

passed on the 19th day of March 1831, entitled, "An Act to provide for the construction of a turnpike road, from

WINCHESTER TO SOME POINT ON THE OHIO RIVER"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly within a period not exceeding fifteen years.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February 1834, entitled "An Act further to provide for the construction of the

NORTH WESTERN ROAD"

as amended by an Act passed on the 7th February 1838"; the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. Loan No. 3.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1837, entitled, An Act further to provide for the construction of the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 5.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 26th day of January 1839, entitled, An Act to amend the Act, entitled, an Act to provide for the construction of the

"NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 6.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of January 1840, entitled an Act concerning loans heretofore authorized for the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth o Virginia, unto heirs, executors, administrators o assigns, the sum of Dollars, bearing interest at SI per centum per annum, from the day of payable at th Treasury of the Commonwealth aforesaid, on the first day of Jan uary and July in each year; being STOCK, created in pursuance o an Act of the General Assembly of the Commonwealth of Virgini passed on the 14th day of March 1840, entitled, An Act to amend th several Acts concerning the

NORTH WESTERN TURNPIKE ROAD"

and an Act farther to amend the same passed 19th March 184 the principal whereof is irredeemable for twenty years from th day of and afterwards to be redeemed at th pleasure of the General Assembly.

This Certificate is transferable on the books of the Secon Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year abo written.

$

BANK LOAN.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth Virginia, unto heirs, executors, administrators assigns, the sum of Dollars, bearing interest at SI per centum per annum, from the day of payable at t Treasury of the Commonwealth aforesaid, on the first day of Ja uary and July in each year; being STOCK created in pursuance an Act of the General Assembly of the Commonwealth of Virgini passed 19th day of March 1839, entitled, "An Act to provide f further subscriptions on the part of the State to

THE EXCHANGE BANK
and
NORTHWESTERN BANK OF VIRGINIA

the principal whereof is irredeemable for twenty years from the day of *in whole or in part, at the pleasure of the Commonwealth.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

*This language is vague. Possibly words "And then to be redeemed" just before "in whole or in part at pleasure of General Assembly" were intended to be inserted.

J. R. & K. LOAN (SEPARATE REGISTER).

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd March 1860, entitled, "An Act to amend the Charter of the

JAMES RIVER AND KANAWHA COMPANY"

the principal whereof is irredeemable for thirty-four years from the first day of January 1860, and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

IN THE

ıpreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY EXHIBIT A-1.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York.

For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY REPORT AS

Printed by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
11 William Street, New York

For the Printer

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

THE AMOUNT OF THE PUBLIC DEBT OF VIRGINIA.

PARAGRAPH I OF DECREE.

Supplementary Statement of Bonds Guaranteed by Virginia Outstanding January 1, 1861.

Undetermined contingent liability of the Commonwealth of Virginia with respect to the Bonds of the Chesapeake & Ohio Canal Co., as follows:

187 6% Bonds of $1,000 } in broken series of numbers
226 6% Bonds of $ 500 } from No. 1 to No. 1,495 . . $300,000.00

bearing dates from Nov. 13, 1847 to Nov. 9, 1849.

Of this issue of Bonds the following were redeemed by the Commonwealth of Virginia, April 11, 1903, (Transfer No. 1888) in her settlement with the United States for Virginia Bonds held by the Secretary of the Interior for the benefit of certain Indian Tribes:

No.	10	$1,000.00
	482	1,000.00
	487	1,000.00
	488	1,000.00
	857	1,000.00
	872	500.00
	873	500.00
	1048	1,000.00
	1140	1,000.00
	1419	1,000.00
	1420	1,000.00
	1490	1,000.00
	1492	1,000.00
	1493	1,000.00
		$13,000.00

These Bonds are guaranteed by the Commonwealth of Virginia under Act of March 8, 1847, Chapter 107.

Paragraph 1 (after preamble) recites the terms of the Guarantee as follows:

"I, A. B., Treasurer of the Commonwealth of Virginia, in conformity to an Act of the General Assembly, passed on the day of in the year eighteen hundred and forty-seven, do hereby pledge the faith of the state for the punctual payment of the interest, and the ultimate re-

demption of the principal sum of money appearing due by the within (or above) bond, according to the terms therein specified.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Richmond, Virginia, this ——— of ———, Eighteen ———.

A. B., Treasurer."

Payable 35 years after date of issue or in 1882, 1883 and 1884.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant agrees that the amounts shown above are correct, but denies that these bonds formed any part of the outstanding debt of the Commonwealth of Virginia on January 1st, 1861, or that they have since become such a debt; and claims that even if these bonds should be paid in full by the Commonwealth of Virginia, her remedy would lie against the Chesapeake & Ohio Canal Co., and not in any case against the State of West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BYRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
56 William Street, New York
For the Plaintiff

THOMAS REED DEWEY
Certified Public Accountant
30 Church Street, New York
For the Defendant

B-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT B-1.

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area:

Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%

Total Area:

Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:

Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

Estimated—With Slaves:

Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%

Estimated—Without Slaves:

Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT C-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT C-1

Page [illegible]

[illegible] WATER POWER & COMPANY
[illegible]
[illegible]
For the Plaintiff

THOMAS BIRD PRICE
[illegible]
[illegible]
For the Defendant

C-1
Page 1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

SUMMARY OF PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

PARAGRAPH III OF DECREE.

Details of which are shown on pages numbered 2 to 6, inclusive, following

Total Claimed by Plaintiff:

Group I Pages 2 & 3	Bridges	$ 3,000.00	
	Railroads	1,316,992.42	
	Turnpikes	1,579,341.81	
	Miscellaneous	1,253,200.10	
			$4,152,534.33
Group II Pages 4, 5 & 6	Bridge Co's	$ 78,412.50	
	Navigation Co's	210,500.00	
	Turnpike Co's	803,555.83	
	Banks	391,800.00	
	Town of Bath	2,500.00	
			1,486,768.33
			$5,639,302.66

Total Conceded by Defendant:

Group I	Bridges	$ 3,000.00	
	Turnpikes	1,149,088.92	
	Miscellaneous	99,200.00	
			1,251,288.92
	Difference		$4,388,013.74

This Difference is Composed of the Following:

Group I	Railroads	$1,316,992.42	
	Turnpikes	430,252.89	
	Miscellaneous	1,154,000.10	
			$2,901,245.41
	and all of Group II		1,486,768.33
			$4,388,013.74

Certified Correct as to Summary and Details.

ARTHUR G POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

All Expenditures Made by the Commonwealth of Virginia Within the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Show Inclusive.

All Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defend

PARAGRAPH III OF DECREE.

Group I.

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by proper charges III of
			Basis.	Amount.	Basis.
	Bridges:				
1	Coal River Bridge	$ 3,000.00		$ 3,000.00	
	Railroads:				
2	Covington & Ohio Railroad	$2,787,128.33	Direct Construction	$1,146,460.42	
3	Winchester & Potomac Railroad Company	270,000.00	Mileage 63.16%	170,532.00	
	Total	3,057,128.33		$1,316,992.42	
	Turnpikes and Roads:				
4	Abbs Valley and Tug Road	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%
5	Alleghany Mountain Turnpike	1,074.00	" 55.55%	596.66	" 55.55%
6	Berryville and Charlestown Turnpike Company	20,455.74	" 58-1/3%	11,932.52	
7	do. Purchase of the Road in 1858	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%
8	Franklin and Monterey Turnpike	13,694.09	" 55.1%	7,545.44	" 55.1%
9	Harrisonburg to Hardy and Pendleton Co. Road	1,000.00	" 50%	500.00	" 50%
10	Kanawha Turnpike	177,054.34	Direct Construction and 82% Mileage	152,130.54	
11	do. Extraordinary Repairs (Eastern Section)	6,050.66	Mileage 42.87%	2,593.92	
12	do. do. (Western Section)	7,189.65	Direct Construction	7,189.65	
13	do. Extension	80,955.28	do.	80,955.28	
14	Kanawha River Improvements	59,572.36	do.	59,572.36	
15	Kanawha Board—Bonds	60,000.00		60,000.00	
16	North Western Turnpike	620,271.38	Direct Construction	(1) 469,148 53	Direct Construction
17	do. (Maryland Section)	7,882.92	do.	7,882.92	
18	Prices Turnpike and Cumberland Gap Road	72,780.67	do.	9,212.20	Direct Construction
19	Raleigh and Grayson Turnpike	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage
20	Staunton and Parkersburg Turnpike	388,936.97	do.	(2) 264,043.07	do.
21	South Branch of Potomac to Brocks Gap Road	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%
22	Skidmore Fork to South Fork of South Branch of Potomac Road	1,000.00	" 58.33%	583.33	" 58.33%
23	Beverly and Fairmont Road	75,384.65		75,384.65	
24	Beverly and Clarksburg Road	2,724.00		12,000.00	
	and Road from Monongalia Co. to Beverly and Clarksburg Road	9,276.00			
	Carried forward	1,656,789.68		$1,241,308.11	

NOTE. Items 10 to 14 inclusive, are included by the Defendant under Paragraph VII of the Decree.

(1) Not
(2) Not

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

in the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Shown in Group II), from March 19th, 1823, to December 31st, 1860, Inclusive.

Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defendant.

PARAGRAPH III OF DECREE.

Group I.

	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree. (See Note below.)	
		Basis.	Amount.	Basis.	Amount.	Basis	Amount.
.....	$ 3,000.00	.....	$ 3,000.00	.....	$ 3,000.00		
.....	$2,787,128.33	Direct Construction	$1,146,460.42	.....	.....	Direct Construction	$1,146,460.42
.....	270,000.00	Mileage 63.16%	170,532.00	.....	.....	Mileage 63.16%	170,532.00
.....	3,057,128.33	.....	$1,316,992.42	.....	.....	.....	$1,316,992.42
.....	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%	$ 4,009.45		
.....	1,074.00	" 55.55%	596.66	" 55.55%	596.66		
.....	20,455.74	" 58-1/3%	11,932.52	.....	.....	Mileage 58-1/3%	$ 11,932.52
Road in 1858...	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%	4,221.57		
.....	13,694.09	" 55.1%	7,545.44	" 55.1%	7,545.44		
.....	1,000.00	" 50%	500.00	" 50%	500.00		
.....	177,054.34	Direct Construction and 82% Mileage	152,130.54	.....	.....	Direct Construction and 82% Mileage	152,130.54
on)	6,050.66	Mileage 42.87%	2,593.92	.....	.....	Mileage 42.87%	2,593.92
on)	7,189.65	Direct Construction	7,189.65	.....	.....	Direct Construction	7,189.65
.....	80,955.28	do.	80,955.28	.....	.....	do.	80,955.28
.....	59,572.36	do.	59,572.36	.....	.....	do.	59,572.36
.....	60,000.00		60,000.00	.....	.....	.....	60,000.00
.....	620,271.38	Direct Construction	(1) 469,148.53	Direct Construction	469,148.53		
.....	7,882.92	do.	7,882.92	.....	.....	Direct Construction	7,882.92
.....	72,780.67	do.	9,212.20	Direct Construction	9,212.20		
.....	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage	11,394.22		
.....	388,936.97	do.	(2) 264,043.07	do.	264,043.07		
.....	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%	411.80		
ad Road.....	1,000.00	" 58.33%	583.33	" 58.33%	583.33		
.....	75,384.65	.....	75,384.65	.....	75,384.65		
.....	2,724.00	.....	12,000.00	.....	12,000.00		
Road.....	9,276.00						
.....	1,656,789.68	.....	$1,241,308.11	.....	$859,050.92	.....	$ 382,257.19

nt under Paragraph VII of the Decree.

(1) Not including repairs, etc. $109,587.74
(2) Not including repairs, etc. 21,700.74

Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by proper charg III of
		Basis.	Amount.	Basis.
Brought forward	1,656,789.68		$1,241,308.11	
Turnpikes and Roads (Continued):				
Brandonville, Kingwood and Evansville Road	$ 10,595.73		10,595.73	
Charleston and Weston State Road	4,456.71		4,456.71	
Clarksburg and Point Pleasant State Road	249.00		249.00	
Clarksburg and Buckhannon Turnpike (Macadamizing)	19,259.36		19,259.36	
Cheat Mountain Turnpike	7,697.88		7,697.88	
Fairmont and Wheeling Road	31,848.85		31,848.85	
Huntersville and Lewisburg Turnpike (from Martin's Bottom to Huntersville)	19,976.47		19,976.47	
Huntersville and Parkersburg Road	4,000.00		4,000.00	
Huttonsville and Huntersville Turnpike (to Martin's Bottom)	23,168.72		23,168.72	
Ice's Ferry Road	1,358.00		1,358.00	
Kingwood and West Union Turnpike	18,140.61		18,140.61	
Kanawha and Logan Road $5,000.00				
Logan Court House and Kanawha State Road 2,407.50				
Guyandotte to Kanawha State Road 601.50	8,009.00		8,009.00	
Marlins Bottom and Lewisburg Road	12,615.09		12,615.09	
Middle Fork Road	13,867.34		13,867.34	
Middlebourn to Pennsylvania Road $5,653.00				
and Tyler to Green County Road 1,000.00	6,653.00		6,653.00	
Monroe County to Kentucky Line Road	5,000.00		5,000.00	
Moorefield and Alleghany Turnpike Co. (Building stem to Petersburg)	4,500.00		4,500.00	
Morgantown and Beverly Road	2,999.97		2,999.97	
Nicholas Court House and Gauley Bridge Turnpike	1,500.00		1,500.06	
Ohio River and Maryland Road	95,934.37		95,934.37	
South Fork of South Branch of Potomac River to Petersburg Road	900.00		900.00	
Princeton and Red Sulphur Springs Turnpike	4,200.00		4,200.00	
Sandy River (Wayne Co.) to Kanawha Turnpike (see Wilsons Creek to Kanawha Turnpike)	3,500.00		3,500.00	
Slavin's Cabin and Summerville Road	16,322.30		16,322.30	
Sistersville and Salem Turnpike	11,326.64		11,326.64	
Wilsons Creek to Kanawha Turnpike (see Sandy River to Kanawha Turnpike)	4,000.00		4,000.00	
Wyoming Court House to Bluffs Road	5,954.66		5,954.66	
Total	1,994,823.38		$1,579,341.81	
Miscellaneous:				
Twelve Pole River Improvement	$ 1,200.00		$ 1,200.00	
Harpers Ferry Raid $255,745.77				
Deduct—Transportation of Troops, and Ordnance and Ordnance Stores, and Sundry Credits 66,027.18	189,718.59		189,718.59	
School Commissioners	830,865.37	Direct Expenditure	830,865.37	
Surveys	250,206.56		106,416.14	

	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree.	
		Basis.	Amount.	Basis.	Amount.	Basis.	Amount.
....	1,656,789.68	.....	$1,241,308.11	.....	$ 859,050.92	.....	$ 382,257.19
.....	$ 10,595.73	.....	10,595.73	.....	.....	.....	10,595.73
.....	4,456.71	.....	4,456.71	.....	4,456.71		
.....	249.00	.....	249.00	.....	249.00		
.....	19,259.36	.....	19,259.36	.....	.....	.....	19,259.36
.....	7,697.88	.....	7,697.88	.....	7,697.88		
.....	31,848.85	.....	31,848.85	.....	31,848.85		
n to Hunters-							
.....	19,976.47	.....	19,976.47	.....	19,976.47		
.....	4,000.00	.....	4,000.00	.....	4,000.00		
n)	23,168.72	.....	23,168.72	.....	23,168.72		
.....	1,358.00	.....	1,358.00	.....	1,358.00		
.....	18,140.61	.....	18,140.61	.....	.....	.....	18,140.61
.. $5,000.00							
.. 2,407.50							
.. 601.50	8,009.00	.....	8,009.00	.....	8,009.00		
.....	12,615.09	.....	12,615.09	.....	12,615.09		
.....	13,867.34	.....	13,867.34	.....	13,867.34		
.. $5,653.00							
.. 1,000.00	6,653.00	.....	6,653.00	.....	6,653.00		
.....	5,000.00	.....	5,000.00	.....	5,000.00		
ersburg) ..	4,500.00	.....	4,500.00	.....	4,500.00		
.....	2,999.97	.....	2,999.97	.....	2,999.97		
.....	1,500.00	.....	1,500.00	.....	1,500.00		
.....	95,934.37	.....	95,934.37	.....	95,934.37		
f Road.....	900.00	.....	900.00	.....	900.00		
.....	4,200.00	.....	4,200.00	.....	4,200.00		
ns Creek to							
.....	3,500.00	.....	3,500.00	.....	3,500.00		
.....	16,322.30	.....	16,322.30	.....	16,322.30		
.....	11,326.64	.....	11,326.64	.....	11,326.64		
to Kanawha							
.....	4,000.00	.....	4,000.00	.....	4,000.00		
.....	5,954.66	.....	5,954.66	.....	5,954.66		
.....	1,994,823.38	.....	$1,579,341.81	.....	$1,149,088.92	.....	$ 430,252.89
.....	$ 1,200.00	.....	$ 1,200.00	.....	$ 1,200.00		
$255,745.77							
66,027.18	189,718.59	.....	189,718.59	.....	.....	.....	$ 189,718.59
.....	830,865.37	Direct Expenditure	830,865.37	.....	.....	.....	830,865.37
.....	250,206.56	.....	106,416.14	.....	.....	Direct Expenditure, Mileage and Percentage	106,416.14
.....	125,000.00	.....	125,000.00	.....	98,000.00	.....	27,000.00

(Group II.) Disbursements made by the Commonwealth of Virginia in payment of subscriptions to the capital stock of joint stock companies and corporations, including banks, created by her, the property or works whereof were situated in whole or in part in the territory now constituting the State of West Virginia, and a loan to the Town of Bath in said territory; all claimed by Virginia under Paragraph III of the decree. The plaintiff and defendant agree to the correctness of the amounts of said disbursements and to the portion of the property situated in West Virginia, as set forth in this table; but the defendant denies that they are a proper charge against her under this paragraph, and denies that some of the items are a proper charge against her in any event, and claims that, so far as she is liable at all, she is liable under Paragraph VII of the decree.

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Bridge Companies:			
57	Buckhannon Bridge Company	$ 1,800.00	.....	$ 1,800.00
58	Cheat River Toll Bridge Company	4,612.50	.....	4,612.50
59	Elk River Bridge Company	6,000.00	.....	6,000.00
60	Fairmont and Palatine Bridge Company	12,000.00	.....	12,000.00
61	Guyandotte Bridge Company	12,000.00	.....	12,000.00
62	Morgantown Bridge Company	24,800.00	.....	24,800.00
63	North Branch Bridge Company	3,000.00	.....	3,000.00
64	South Branch Bridge Company	4,200.00	.....	4,200.00
65	Virginia and Maryland Bridge Company	10,000.00	.....	10,000.00
	Total	$ 78,412.50	.....	$ 78,412.50
	Navigation Companies:			
66	Coal River Navigation Company	$ 96,000.00	.....	$ 96,000.00
67	Guyandotte Navigation Company	106,800.00	.....	106,800.00
68	Monongalia Navigation Company	2,660.00	.....	2,660.00
69	Tug Fork Navigation Company	5,040.00	.....	5,040.00
	Total	$210,500.00	.....	$210,500.00
	Turnpike Companies:			
			Mileage.	
70	Berkeley and Hampshire Turnpike Company	$ 16,572.00	92.46%	$ 15,322.47
71	Cross Roads and Summit Point Turnpike Company	6,000.00	46.38%	2,782.80
72	Giles, Fayette and Kanawha Turnpike Company	44,991.60	97.62%	43,920.80
73	Hardy and Winchester Turnpike Company	23,400.00	67.21%	15,727.14
74	Huntersville and Warm Springs Turnpike Company	6,159.24	21.36%	1,315.61
75	Hillsboro and Harpers Ferry Turnpike Company	6,000.00	2.38%	142.80
76	Martinsburg and Winchester Turnpike Company	27,000.00	59.09%	15,954.30
77	Morgan and Frederick Turnpike Company	8,005.00	73 1-3%	5,870.33
78	Mountain Lake and Salt Sulphur Springs Turnpike Co.	4,800.00	16 2-3%	800.00
79	North Frederick Turnpike Company	11,325.00	11.68%	1,322.76
80	Raleigh and Wythe Line Turnpike Company	400.00	73 1-3%	293.33
81	Brandonville, Kingwood and Evansville Road Company	3,193.46	.....	3,193.46
82	Buckhannon and Little Kanawha Turnpike Company	7,773.00	.....	7,773.00
83	Charleston and Point Pleasant Turnpike Company	31,260.00	.....	31,260.00
84	Charleston, Ripley and Ravenswood Turnpike Company	27,519.41	.....	27,519.41
85	Clarksburg and Philippi Turnpike Company	5,446.25	.....	5,446.25
86	Clarksburg and Wheeling Turnpike Company	4,195.35	.....	4,195.35
87	Clarksburg and Buckhannon Turnpike Co.	9,255.13	.....	9,255.13
88	Cacapon and North Branch Turnpike Company	12,000.00	.....	12,000.00
89	Clear Fork Road Company	600.00	.....	600.00
	Carried forward,	$255,895.44	.....	$204,694.94

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$255,895.44		$264,694.94
	Turnpike Companies (Continued):			
90	Cranberry Summit and Brandonville Turnpike Company.	4,120.11	.....	4,120.11
91	Dunkard Creek Turnpike Company.....	6,000.00	.....	6,000.00
92	East River and Princeton Turnpike Company.....	4,800.00	.....	4,800.00
93	Fish Creek Turnpike Company.....	6,000.00	.....	6,000.00
94	Franklin and Circleville Turnpike Company.....	2,175.00	.....	2,175.00
95	Gilmer and Braxton Turnpike Company.....	6,699.80	.....	6,699.80
96	Gilmer, Ripley and Ohio Turnpike Company.....	29,974.80	.....	29,974.80
97	Gnatty Creek and West Union Turnpike Company.....	5,700.55	.....	5,700.55
98	Grave Creek and Pennsylvania Line Turnpike Company.	1,800.00	.....	1,800.00
99	Hampshire and Morgan Turnpike Company.....	6,510.00	.....	6,510.00
100	Hardy and Randolph Turnpike Company.....	7,134.78	.....	7,134.78
101	Harrisville Turnpike Company.....	6,000.00	.....	6,000.00
102	Hedgesville and Potomac Turnpike Company.....	5,400.00	.....	5,400.00
103	Holliday Cove Turnpike Company.....	4,733.33	.....	4,733.33
103A	Holliday Cove and Wellsburg Turnpike Company.....	5,916.67	.....	5,916.67
104	Holliday Cove and New Cumberland Turnpike Company.	2,400.00	.....	2,400.00
105	Kingwood and West Union Turnpike Company.....	8,769.48	.....	8,769.48
106	Leading Creek and Buffalo Creek Turnpike Company....	5,847.84	.....	5,847.84
107	Letart Falls and West Columbia Turnpike Company....	2,350.00	.....	2,350.00
108	Lewisburg and Blue Sulphur Springs Turnpike Company.	4,950.00	.....	4,950.00
109	Logan, Raleigh and Monroe Turnpike Company.....	7,321.24	.....	7,321.24
110	Marshall and Ohio Turnpike Company.....	11,943.75	.....	11,943.75
111	Martinsburg and Potomac Turnpike Company.....	15,290.00	.....	15,290.00
112	Middleway and Gerardstown Turnpike Company.....	11,943.75	.....	11,943.75
113	Moorefield and North Branch Turnpike Company.....	28,137.75	.....	28,137.75
114	Moorefield and Alleghany Turnpike Company.....	8,779.78	.....	8,779.78
115	Morgantown and Bridgeport Turnpike Company.....	10,687.40	.....	10,687.40
116	New Creek and Hardy Turnpike Company.....	5,431.24	.....	5,431.24
117	New Manchester Turnpike Company.....	2,000.00	.....	2,000.00
118	Newark Turnpike Company.....	2,000.00	.....	2,000.00
119	North River Turnpike Company.....	5,400.00	.....	5,400.00
120	Pattersons Creek Valley Turnpike Company	9,900.00	.....	9,900.00
121	Parkersburg and Elizabethtown Turnpike Company.....	4,800.00	.....	4,800.00
122	Pleasant Valley and Tunnelton Turnpike Company.....	4,078.45	.....	4,078.45
123	Potomac Turnpike Company.....	2,489.70	.....	2,489.70
124	Raleigh and Boone Graded Road Company.....	1,800.00	.....	1,800.00
125	Ravenswood and Reedy Creek Turnpike Company.....	8,999.99	.....	8,999.99
126	Red and Blue Sulphur Springs Turnpike Company.....	8,856.66	.....	8,856.66
	Carried forward,	$534,037.51	.....	$482,837.01

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$534,037.51	.....	$482,837.01
	Turnpike Companies (Continued):			
127	Reedy and Harrisville Turnpike Company.....	1,751.87	.....	1,751.87
128	Ritchie and Gilmer Turnpike Company.....	8,891.18	.....	8,891.18
129	Sandy River Turnpike Company.....	3,000.00	.....	3,000.00
130	Salem and Harrisville Turnpike Company.....	3,817.92	.....	3,817.92
131	Sheperdstown and Smithfield Turnpike Company.....	18,575.00	.....	18,575.00
132	Shinston Turnpike Company.....	13,302.26	.....	13,302.26
133	Smithfield, Charlestown and Harpers Ferry Turnpike Co.	14,000.00	.....	14,000.00
134	Sistersville and Salem Turnpike Company.....	9,000.00	.....	9,000.00
135	St. Mary's Turnpike Company.....	6,000.00	.....	6,000.00
136	Sweet and Salt Sulphur Springs Turnpike Company....	10,104.00	.....	10,104.00
137	Walnut Gap Road Company.....	1,305.37	.....	1,305.37
138	Wellsburg and Washington Turnpike Company.....	7,071.01	.....	7,071.01
139	Wellsburg and Bethany Turnpike Company.....	12,590.22	.....	12,590.22
140	Weston and Gauley Bridge Turnpike Company.....	64,098.31	.....	64,098.31
141	Weston and Fairmont Turnpike Company.....	97,962.50	.....	97,962.50
142	Weston and West Union Turnpike Company.....	5,538.21	.....	5,538.21
143	West Union Turnpike Company.....	3,054.00	.....	3,054.00
144	West Milford and New Salem Turnpike Company.....	10,526.32	.....	10,526.32
145	White and Salt Sulphur Springs Turnpike Company....	4,000.00	.....	4,000.00
146	Wheeling, West Liberty and Bethany Turnpike Company.	21,000.00	.....	21,000.00
147	Williamsport Turnpike Company.....	5,130.65	.....	5,130.65
	Total.....	$854,756.33	.....	$803,555.83
	Banks:			
148	Fairmont Bank.....	$ 50,000.00	.....	$ 50,000.00
149	Northwestern Bank of Virginia at Wheeling.....	341,800.00	.....	341,800.00
	Total.....	$391,800.00	.....	$391,800.00
	Town of Bath:			
150	Loan to Town of Bath for road to St. John's River	$ 2,500.00	.....	$ 2,500.00

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT D-1.

Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said Debt was Contracted as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Average Total Population of Virginia With and Without Slaves, as shown by the Census of the United States.

PARAGRAPH IV OF DECREE.

Ordinary Expenses of the Government from March 19th, 1823, to December 31st, 1860, Inclusive.

Plaintiff	$37,794,211.18
Defendant	18,207,684.29
Difference	$19,586,526.89

This difference is composed of the following items, all of which are agreed to by the parties to be correct as to amount, but nothing contained herein shall be construed as an admission as to the propriety of including or excluding any disputed items:

No. 1	Tobacco Receipts (1)		$ 353,123.96
2	Constitutional Conventions		258,906.28
3	Slaves transported and executed		311,168.35
4	Boundary Lines		16,704.78
5	Maps (Commonwealth)	$16,628.04	
	Maps (Board of Public Works)	11,446.48	
			28,074.52
6	Deaf, Dumb and Blind Institution 1845-1860, New Buildings, etc. (See pages 5-7 for details)		80,661.94
7	International Exchanges		2,836.19
8	Overpayment of Treasury Notes		50.00
9	Printing Treasury Notes		375.74
10	Loss account of Counterfeit Money		190.00
11	Virginia Military Institute, New Buildings, etc. (See pages 8-9 for details)		151,000.00
12	University of Virginia, Repairs and Improvements to Buildings and Water Supply (See page 10 for details)		25,000.00
13	Improvements, Public Square (See page 11 for details)		1,456.91
	Improvements, Capitol Square (See page 12 for details)		12,278.47
14	Fugitive Slave Expense	$ 701.00	
	Reward, Additional	1,500.00	
			2,201.00
	Carried forward		$ 1,244,028.14

(1) Deducted from ordinary expenses by defendant.

	Brought forward		$ 1,244,028.14
No. 15	Penitentiary Lot, New Hospital Building, etc. (See page 13 for details)		13,947.48
16	Calling out Militia at Wheeling in 1836		1,099.00
17	Medical College of Virginia, Additions and Improvements to Buildings, etc. (See page 14 for details)		25,000.00
18	Attorney General's Fees, prosecuting Selden, Withers & Company		500.00
19	Eastern and Western Asylums (See pages 15-22 for details):		
	New Buildings, etc.	$336,845.56	
	Support	7,450.01	
			344,295.57
20	Gun House at Alexandria		900.00
21	Cannon House, Surry County		110.00
22	Gun House for Richmond Artillery		1,079.09
23	Sundry B. P. W. Expenses		36,728.50
24	Interest:		
	Interest on Public Debt	$18,324,044.50	
	Interest on Treasury Notes	133,527.34	
	Interest on Temporary Loans	107,844.57	
	Interest on Old Military Debt of 1814 and prior	9,331.43	
			18,574,747.84
			$20,242,435.62
	Less—Amount of payments to School Commissioners admitted by Defendant in Exhibit D-1, under Paragraph IV for		655,908.73
	But charged by Plaintiff as $830,865.37 (being payments into West Virginia Counties) in Exhibit C-1, under Paragraph III.		
	Net Difference		$19,586,526.89

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

THE DIVISION OF THE ORDINARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CA

PLAINTIFF:

"The Average Total Population" *including slaves* is construed to mean the average for each decade determined by averaging the census at the beginning an found determines the proportion in which the Total Ordinary Expense for that decade is to be charged to the two States. (See page 3 for details.)

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	996,340	85.9789%
1830 and 1840	"	1,024,871	83.6218%
1840 and 1850	"	1,067,304	80.2045%
1850 and 1860	"	1,169,489	77.5014%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,469,250.90	83.6218%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,978,147.55	80.2045%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	15,796,066.53	77.5014%
	Total	$37,794,211.18		$30,138,816.38	

"The Average Total Population" *excluding slaves* is treated in the same manner as above, producing the following:

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	559,399	79.3334%
1830 and 1840	"	583,579	76.1625%
1840 and 1850	"	626,041	71.9611%
1850 and 1860	"	707,228	68.8438%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,671,563.26	79.3334%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,070,581.13	76.1625%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,260,935.16	71.9611%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	14,031,504.53	68.8438%
	Total	$37,794,211.18		$27,034,584.08	

Total charge to West Virginia on basis of Average Total Population *including slaves* .....

Total charge to West Virginia on basis of Average Total Population *excluding slaves* .....

Certified co
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Defendant agrees that the above calculations are correctly made but objects both to the method adopted and to the division so arrived at as well as the amou

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THE ORDINARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CAUSE AS FOLLOWS:

ned to mean the average for each decade determined by averaging the census at the beginning and at the end of that decade. The average total population so dinary Expense for that decade is to be charged to the two States. (See page 3 for details.)

1830 (estimated)	Virginia	996,340	85.9789%	West Virginia	162,479	14.0211%
1840	"	1,024,871	83.6218%	"	"	200,781	16.3782%
1850	"	1,067,304	80.2045%	"	"	263,425	19.7955%
1860	"	1,169,489	77.5014%	"	"	339,501	22.4986%

n the above percentages:

$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%	West Virginia,	$ 472,162.49	14.0211%
5,344,600.21	Virginia,	4,469,250.90	83.6218%	West Virginia,	875,349.31	16.3782%
8,700,443.93	Virginia,	6,978,147.55	80.2045%	West Virginia,	1,722,296.38	19.7955%
20,381,653.15	Virginia,	15,796,066.53	77.5014%	West Virginia,	4,585,586.62	22.4986%
$37,794,211.18		$30,138,816.38			$ 7,655,394.80	

in the same manner as above, producing the following:

1830 (estimated)	Virginia	559,399	79.3334%	West Virginia,	145,725	20.6666%
1840	"	583,579	76.1625%	"	"	182,650	23.8375%
1850	"	626,041	71.9611%	"	"	243,931	28.0389%
1860	"	707,228	68.8438%	"	"	320,065	31.1562%

n the above percentages:

$ 3.367,513.89	Virginia,	$ 2,671,563.26	79.3334%	West Virginia,	$ 695,950.63	20.6666%
5.344,600.21	Virginia,	4,070,581.13	76.1625%	West Virginia,	1,274,019.08	23.8375%
8,700,443.93	Virginia,	6,260,935.16	71.9611%	West Virginia,	2,439,508.77	28 0389%
20,381,653.15	Virginia,	14,031,504.53	68.8438%	West Virginia,	6,350,148.62	31.1562%
$37,794,211.18		$27,034,584.08			$10,759,627.10	

est Virginia on basis of Average Total Population *including slaves* ..... $ 7,655,394.80

est Virginia on basis of Average Total Population *excluding slaves* $10,759,627.10

Certified correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

de but objects both to the method adopted and to the division so arrived at as well as the amount to be divided.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,
For the Defendant.

PLAINTIFF'S METHOD OF ARRIVING AT PERCENTAGES TO DIVIDE ORDINARY EXPENSES OF GOVERNMENT.

TOTAL POPULATION INCLUDING SLAVES.

	Virginia.		*West Virginia.*			
1820	928,558		136,808			
1830	1,034,481		176,924			
10 years' Increase	105,923		40,116			
1022/3652 of Increase	29,642		11,226			
Add—1820	928,558		136,808			
1823		958,200		148,034		
1830		1,034,481		176,924		
		2)1,992,681		2)324,958		
		996,340	85.9789%	162,479	14.0211%	
1830		1,034,481		176,924		
1840		1,015,260		224,537		
		2)2,049,741		2)401,461		
		1,024,871	83.6218%	200,731	16.3782%	
1840		1,015,260		224,537		
1850		1,119,348		302,313		
		2)2,134,608		2)526,850		
		1,067,304	80.2045%	263,425	19.7955%	
1850		1,119,348		302,313		
1860		1,219,630		376,688		
		2)2,338,978		2)679,001		
		1,169,489	77.5014%	339,501	22.4986%	

TOTAL POPULATION EXCLUDING SLAVES.

	Virginia.		*West Virginia.*			
1820	518,529		121,689			
1830	582,397		159,251			
10 years' Increase	63,868		37,562			
1022/3652 of Increase	17,873		10,511			
Add—1820	518,529		121,689			
1823		536,402		132,200		
1830		582,397		159,251		
		2)1,118,799		2)291,451		
		559,399	79.3334%	145,725	20.6666%	
1830		582,397		159,251		
1840		584,761		206,049		
		2)1,167,158		2)365,300		
		583,579	76.1625%	182,650	23.8375%	
1840		584,761		206,049		
1850		667,320		281,813		
		2)1,252,081		2)487,862		
		626,041	71.9611%	243,931	28.0389%	
1850		667,320		281,813		
1860		747,136		358,317		
		2)1,414,456		2)640,130		
		707,228	68.8438%	320,065	31.1562%	

"The Average Total Population of Virginia, with and without Slaves, as shown by the census of the United States" is construed to mean the average of the five censuses from 1820 to 1860 both inclusive; and the proportion of the total ordinary expenses of Virginia for the period from March 19th, 1823, to December 31st, 1860, chargeable to West Virginia on the above basis, is determined by dividing the said total Ordinary Expenses on the ratio which the average total population of Virginia with and without slaves bears to the average total population with and without slaves of those counties which were created into the State of West Virginia:

Virginia:						
Census of 1820	Population with Slaves	928,558		Population without Slaves	518,529	
" " 1830		1,034,481			582,397	
" " 1840		1,015,260			584,761	
" " 1850		1,119,348			667,320	
" " 1860		1,219,630			747,136	
Total 5 censuses		5,317,277			3,100,143	
Average 5 censuses		1,063,455	81.3718%		620,029	73 3369%
West Virginia:						
Census of 1820	Population with Slaves	136,808		Population without Slaves	121,689	
" " 1830		176,924			159,251	
" " 1840		224,537			206,049	
" " 1850		302,313			281,813	
" " 1860		376,688			358,317	
Total 5 censuses		1,217,270			1,127,119	
Average 5 censuses		243,454	18.6282%		225,424	26.6631%

The proportion of the Ordinary Expenses of the government of Virginia assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia as shown by the census of the United States:

With Slaves.....18.6282% of $18,207,684.29 = $3,391,763.84

Without Slaves.....26.6631% of $18,207,684.29 = $4,854,733.07

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY.
For the Defendant.

Plaintiff agrees that the above calculations are correctly made, but objects both to the method adopted, and the division so arrived at, as well as the amount to be divided.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

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Brought forward		$108,084.88
An Act of March 1st, 1854, page 29, Chapter 39, authorized payment of an amount of $17,750 for erecting and repairing buildings and enclosures, for purchasing a lot of land, for the use of the Asylum, for improving its grounds, for providing furniture and other conveniences for the same, $11,750.00, and for lighting the institution with gas, $6,000.00. Payments were made as follows:		
Year 1854	$ 5,750.00	
" 1855	6,000.00	
" 1856	6,000.00	
		17,750.00
An Act of March 18th, 1856, page 24, Chapter 17, authorized payment of $7,500 for purchase of certain sections of streets penetrating the lands adjacent thereto for the use of the Asylum. Payment was made in 1856		7,500.00
		$133,224.88
Less—Credit—Building Account		54.69
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account		$133,280.19

WESTERN ASYLUM AT STAUNTON, ESTABLISHED UNDER ACT OF JANUARY 22nd, 1825.

This Asylum was established under an Act of January 22nd, 1825, page 30, Chapter 35, authorizing directors to purchase a piece or parcel of land, not exceeding four acres, and contract for the erection thereon of a commodious house or houses, for the accommodation of persons of unsound mind. Provided that the whole expense shall not exceed $10,000.00.

Payments were made as follows:

Year	1825	$ 5,000.00	
"	1826	5,000.00	
			$10,000.00

An Act of February 24th, 1827, page 9, Chapter 4, authorized payment of $12,000.00 toward the completion of the Asylum, to be paid by installments as the work progressed.

Payments were made as follows:

Year	1827	$6,000.00	
"	1827	6,000.00	
			12,000.00

An Act of February 17th, 1830, page 9, Chapter 6, authorized payment of $5,000.00 for enclosing buildings of the Asylum and the lot with a suitable wall of stone or brick. Payment was made in 1830..... 5,000.00

Cost of buildings not claimed by Plaintiff as Ordinary Expenses. (See page 22)..... $ 27,000.00

An Act of March 1st, 1833, page 22, Chapter 29, authorizing payment of an amount not to exceed $6.000.00 for the extension of the buildings of the institution so as to make same fit for the reception and accommodation of an additional number of lunatics. That the plan and dimensions of said building shall be agreed upon and prescribed by the directors and shall contain no more than forty cells, or apartments. Payment was made in 1833..... 6,000.00

Carried forward $33,000.00

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Brought forward	$ 33,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $1,000.00 to contract for conducting an ample supply of good spring water to the Asylum in iron pipes without the use of forcing pump or other machinery. Payment was made in 1833	1,000.00
An Act of March 12th, 1834, page 27, Chapter 19, authorized appropriations as might be necessary to defray expenses of the additional buildings authorized by an Act of March 1st, 1833. Provided the whole expense shall not exceed $9,000.00 for each hospital over and above the amount already appropriated to these objects by said Act of March 1st, 1833. Payment was made in 1834.....	9,000.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a sum of money in addition to the sum appropriated by Act of March 1st, 1833, for conducting an ample supply of good spring water to the said Asylum in iron pipes, the additional sum not to exceed $1,200.00. Payment was made in 1835.....	1,200.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a further sum not to exceed $1,500.00 in addition to amounts heretofore appropriated by Acts of March 1st, 1833, and March 12th, 1834, necessary for the completion of the additional buildings. Payment was made in 1835.....	1,500.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of an amount of $1,500.00 for completing the graduation and building partition walls for the male and female wards. Payment was made in 1835	1,500.00
An Act of March 22nd, 1836, page 9, Chapter 8, authorized payment of an amount not to exceed $6,000.00, in addition to amounts heretofore appropriated, for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the Act of March 12th, 1835. Payment was made in 1836	6,000.00
Carried forward	$ 53,200.00

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	Brought forward	$ 53,200.00
An Act of March 31st, 1837, page 18, Chapter 19, authorized payment of an amount not to exceed $1,000.00 for the purchase of land near hospital, a neat two-horse carriage and a pair of horses, and such other articles as are recommended in the report of the physician of the Western Asylum, and calculated to aid in the restoration of patients confined in a lunatic hospital. Payment was made in 1837		1,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $5,000.00 for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as were recommended by the report of the physician or directors. Payment was made in 1838		5,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000.00 for the extension of buildings so as to make them fit for the accommodation of an additional number of lunatics. Payment was made in 1838.....		12,000.00
An Act of April 10th, 1839, page 14, Chapter 17, authorized payment of an amount not to exceed $5,000.00, in addition to sums heretofore appropriated, for an ample supply of water. Payment was made in 1839		5,000.00
An Act of March 8th, 1842, page 16, Chapter 18, authorized that an amount of $9,060.44 be appropriated to discharge in full, including any claim for interest, the debt due from the Commonwealth to the workmen for completing the additional building to the Asylum. Payment was made in 1842.....		9,060.44
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not exceeding $24,000.00 out of the Treasury of the Commonwealth for entire completion of the additional buildings thereby authorized, as follows: $8,000 on the ratification of the contract and execution of the bond required; $8,000 in twelve months thereafter, and remaining $8,000 on the completion of the buildings, provided the same shall not be in less than twelve months from the last payment.		
Payments were made as follows:		
Year 1842	$ 8,000.00	
" 1843	8,000.00	
" 1844	8,000.00	
		24,000.00
	Carried forward	109,260.44

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Brought forward		$109,260.44
An Act of February 12th, 1844, page 16, Chapter 10, authorized payment of $8,000.00 for furnishing the new addition to the Asylum, and to the support and maintenance of said Asylum. Payment of $2,000.00 was made in 1844		2,000.00
An Act of March 4th, 1846, page 19, Chapter 17, authorized payment of $4,000.00 for additional purchase of land. Payment was made in 1846		4,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount of $36,000.00 for the completion of additional buildings, as follows: $7,000.00 on the ratification of contract and execution of bond required; $7,000.00 on July 1st, 1848; $7,000.00 on January 1st, 1849; $7,000.00 on July 1st, 1849, and $8,000.00 on January 1st, 1850; provided said buildings shall be completed on the day last aforesaid; if not then, upon the completion thereof.		
Payments were made as follows:		
Year 1848	$ 7,000.00	
" 1849	21,000.00	
" 1850	8,000.00	
		36,000.00
An Act of January 13th, 1849, page 14, Chapter 13, authorized payment of an amount not exceeding $8,500.00 for the puurchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Asylum, and for such clothing as may be necessary for the additonal number of patients to be admitted into said Asylum.		
Payments were made as follows:		
Year 1849	$ 5,000.00	
" 1850	3,500.00	
		8,500.00
An Act of January 19th, 1850, page 15, Chapter 16, authorized payment of $14,500.00 for the purpose of erecting a plain and substantial building, to contain a kitchen, bakery, pantry, store rooms, dining room, chapel, clothes rooms, medicine and library rooms, and other rooms rendered necessary by the great enlargement of said Asylum by previous Acts of the General Assembly.		
Payments to be made as follows: $7,250.00 July 1st, 1850, and $7,250.00 January 1st, 1851, same being sufficient to complete entirely, in the opinion of the directors, the necessary out-buildings in conformity with the present enlarged plan of said Asylum.		
Payments were made as follows:		
Year 1850	$ 7,250.00	
" 1851	7,250.00	
		14,500.00
An Act of February 25th, 1852, page 30, Chapter 36, authorized payment of $5,000.00 for constructing fixtures and apparatus for lighting with gas. Payment was made in 1852		5,000.00
Carried forward		$180,260.44

Brought forward		$180,260.4
An Act of March 1st, 1854, page 29, Chapter 40, authorized payment of an amount of $34,188.00 to heat the buildings by steam, to erect covered connections and verandas, and to enclose the grounds of the said Asylum, as follows: $15,000.00 for heating by steam, $9,150.00 for erection of covered connections and verandas, $10,038.00 for enclosing the grounds; one-half to be paid during the present fiscal year and the remaining half the next succeeding fiscal year.		
Payments were made as follows:		
Year 1854	$ 7,500.00	
" 1855	7,500.00	
" "	5,050.00	
" 1856	1,800.00	
" "	2,000.00	
" "	5,038.00	
" 1857	5,350.00	
		34,188.0
An Act of March 18th, 1856, page 23, Chapter 17, authorized appropriation of $4,185.82 to pay deficit on steam account of said Asylum. Payment of $1,000.00 was made in 1857		1,000.0
An Act of April 7th, 1858, page 12, Chapter 14, authorized appropriation of $3,685.82 to pay balance of deficit on steam account. Payment of $3,685.00 was made in 1858		3,685.0
An Act of March 19th, 1858, page 116, Chapter 166, authorized appropriation of $10,000.00 to procure a supply of water for the Asylum.		
Payments were made as follows:		
Year 1858	$ 2,500.00	
" 1859	7,500.00	
		10,000.0
An Act of March 17th, 1860, page 31, Chapter 5, authorized appropriation of $12,000.00 for erection of laundry. Payment was made in 1860.....		12,931.9
Amount for support in 1835		7,450.0
		$249,515.3
Less:		
Buildings. (See page 18.)	$27,000.00	
Amounts for furniture already included by defendant:		
Under Act of February 12th, 1844. $ 3,000.00		
Under Act of January 13th, 1849. 8,500.00	11,500.00	
		38,500.0
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account.....		$211,015.3

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

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DEFENDANT'S EXHIBIT D-2

COMMONWEALTH OF VIRGINIA—LITERARY FUND.

TOTAL AMOUNT OF THE FUND SHOWING CASH ON HAND AND I
VESTMENTS, AT COST.

	Mch. 19, 1823	Jan. 1, 18
Cash,	$ 94,021.42	$ 23,985
Bank of Virginia stock,	192,013.45	146,832
Farmers' Bank of Virginia stock,	109,492.75	102,305
Northwestern Bank of Virginia stock,	.....	50,000
Bank of the Valley stock,	.....	10,134
Fairmont Bank stock,	.....	50,000
United States Bank stock,	96,400.00	.....
Richmond Academy stock,	.....	400
James River Company stock, the annuity on which was assumed by the Commonwealth in accordance with act passed March 23, 1860,	52,095.00	96,950
(1) University of Virginia, loan No. 1,	40,000.00	40,000
(1) " " " 2,	20,000.00	20,000
(1) " " " 3,	29,100.00	29,100
(1) " " " 4,	30,900.00	30,900
(1) " " " 5,	.....	40,000
(1) " " " 6,	.....	5,000
(1) " " " 7,	.....	15,000
(1) Emory and Henry College loan,	.....	18,000
Washington College loan,	4,000.00	2,000
Loans to individuals,	80,000.00	.....
(1) The Faculty of the Medical Department of the Hampden-Sidney College at Richmond. Amount invested in land and buildings,	.....	25,000
(2) Medical College in the Valley of Virginia: Amount invested in property (at Winchester),	.....	6,400
(2) Davis's book on criminal law, copyright purchased,	.....	12,000
(3) John Preston, State Treasurer, balance due,	58,441.07	58,392
(3) Preston Smith,	649.45	649
United States 6% stock,	13,000.00	.....
James River Company bonds,	50,000.00	65,960
Virginia 6% military bonds,	20,964.40	24,039
" 7% " "	349,000.00	319,000
Virginia 5% internal improvement bonds,	.....	155,750
Virginia 6% internal improvement bonds,	.....	803,395
Bond of the Auditor of Public Accounts for amount paid into Commonwealth fund in accordance with act passed March 18, 1856,	.....	50,562
Total,	$1,240,077.54	$2,201,756

(1) Suspended debts.
(2) Unproductive.
(3) Considered lost.

STATEMENT "A"

Def. Ex. D-2.
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COMMONWEALTH OF VIRGINIA.

TRANSACTIONS OF THE LITERARY FUND, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

TOTAL FUND, MARCH 19, 1823, PER STATEMENT "A,"		$1,240,077.54
ADDITIONS TO THE FUND:—		
CASH:—		
FROM THE COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA—Schedule No. 1,	$ 114,395.46	
FROM THE COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA—Schedule No. 2,	401,972.14	
DIVIDENDS AND INTEREST ON INVESTMENTS OF THE FUND—Schedule No. 3,	1,059,695.03	
FROM OTHER FUNDS OF THE COMMONWEALTH OF VIRGINIA—Schedule No. 4,	3,109,839.88	
UNITED STATES WAR CLAIMS, LESS COMMISSIONS PAID,	182,441.48	
PROFIT ON UNITED STATES STOCK	818.18	
TOTAL ADDITIONS,		$4,869,162.17
		$6,109,239.71
DEDUCTIONS FROM THE FUND:—		
CASH:—		
FOR ACCOUNT OF THE PRIMARY SCHOOLS:—		
Paid from income from investments,	$2,400,331.11	
Paid from Capitation Tax,	655,908.73	$3,056,239.84
UNIVERSITY OF VIRGINIA, (at Charlottesville),	613,000.00	
INSTITUTE FOR THE DEAF, DUMB AND BLIND, (at Staunton),	40,821.02	
VIRGINIA MILITARY INSTITUTE—support,	28,500.00	
MARGARET ACADEMY, (Accomac County),	1,500.00	
SALARIES AND EXPENSES OF THE BOARD Schedule No. 5,	85,322.45	
PREMIUM PAID ON CITY OF RICHMOND STOCK	420.00	
TOTAL CASH DISBURSEMENTS,		$3,825,803.31
LOSSES:—		
AMOUNT WRITTEN OFF FOR THE REDUCTION IN PAR VALUE OF THE BANK OF VIRGINIA STOCK FROM $100. to $70. PER SHARE. 2121 SHARES,	$63,630.00	
LOSS ON UNITED STATES BANK STOCK:—COST—$96,400. SOLD FOR $78,350,	18,050.00	
TOTAL LOSSES,	$81,680.00	
TOTAL DEDUCTIONS,		$3,907,483.31
TOTAL FUND, JANUARY 1, 1861, PER STATEMENT "A,"		$2,201,756.40

STATEMENT "B."

Def. Ex. D-
Page

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc	$ 58,059.4
Escheats, less refunds and expenses, ...	4,603.5
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	49,726.0
Sales of runaway slaves and free negroes, less refunds, ...	2,005.8
Total, ...	$114,395.4

STATEMENT "B".

Schedule No. 1.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc., ...	$306,856.1
Escheats, less refunds and expenses, ...	51,400.5
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	3,996.9
Sales of runaway slaves and free negroes, less refunds, ...	14,514.4
(1) Bristoe Estate:—	
Sale of lots in Prince William County, ...	17,289.1
Net income, ...	7,914.0
Total, ...	$401,972.1

(1) The books of original entry and published reports do not record the origin of the Bristoe estate. It is presumed to have been the property of Robert Bristoe, a British subject, which escheated to the Commonwealth.

STATEMENT "B".

Schedule No. 2.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

INCOME FROM INVESTMENTS AND LOANS, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Dividends on bank stock:—		
Bank of Virginia,		$ 424,209.83
Bank of the Valley,		12,373.00
Farmers' Bank of Virginia,		272,681.75
Northwestern Bank of Virginia,		89,500.00
Fairmont Bank,		2,000.00
Total,		$ 800,764.58
Dividends on James River Company stock, subsequent to dividend of January 1, 1835, received from the James River and Kanawha Company,		155,291.08
Dividends on Richmond Academy stock,		440.88
Dividends on United States Bank stock,		11,350.00
Interest on loans to and dividends on stock of City of Richmond,		16,531.71
Interest on United States 6% stock,		3,200.40
Interest on bonds of the Valley Turnpike Company, guaranteed by the State,		2,090.00
Interest on loans:—		
Emory and Henry College,	$ 3,240.00	
Loans to individuals,	34,241.48	
Library fund,	8,477.76	
Medical College at Winchester,	1,974.93	
Richmond Medical College,	6,552.21	
University of Virginia,	7,200.00	
Washington College,	8,340.00	
Total,		$ 70,026.38
Total,		$1,059,695.03

STATEMENT "B".

Schedule No. 3.

Def. Ex. D
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COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

RECEIPTS FROM OTHER FUNDS OF THE COMMONWEALTH, FR
MARCH 19, 1823, TO JANUARY 1, 1861.

COMMONWEALTH FUND:—		
Capitation Tax,	$ 751,481.63	
United States war claims,	77,216.28	
Interest,	926,919.28	
Total,		$1,755,617
INTERNAL IMPROVEMENT FUND:—		
Interest,	$1,303,535.77	
Dividends on James River Company stock, to and including dividend of January 1, 1825, and the July 1, 1860 dividend,	50,686.92	
Total,		$1,354,222
Total receipts from other funds,		$3,109,839

STATEMENT "B".

Schedule No. 4

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

SALARIES AND EXPENSES OF THE BOARD, FROM MARCH 19, 1823,
JANUARY 1, 1861.

SALARIES:—		
Second Auditor,	$33,342.84	
Clerks,	35,504.51	
Special Accountant,	100.00	
President,	2,326.81	
Directors,	4,556.50	
Messenger,	1,748.27	
Tax on above salaries,	251.31	
Total,		$77,83
EXPENSES:—		
Advertising,	$ 123.13	
Legal expenses,	189.55	
Printing,	4,348.89	
General,	2,830.64	
Total,		$ 7,4
Total salaries and Expenses,		$85,3

STATEMENT "B".

Schedule No. 5.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Cash in Fund, March 19, 1823, per Statement "A",			$ 94,021.42
RECEIPTS:—			
From the counties now constituting the State of West Virginia—Statement "B", Schedule No. 1..		$ 114,395.46	
From counties now constituting the Commonwealth of Virginia—Statement "B", Schedule No. 2,		401,972.14	
Dividends and interest on investments of the fund—Statement "B", Schedule No. 3,		1,059,695.03	
From other funds of the Commonwealth of Virginia:—			
Statement "B", Schedule No. 4,	$2,109,839.88		
Commonwealth Fund—Redemption of 7% Military Debt,	30,000.00		
Internal Improvement Fund. On account of balance due from J. Preston, State treasurer, ..	48.67	3,139,888.55	
United States war claims, less commissions paid		152,441.48	
Profit on United States stock		818.18	
Investments converted into cash:—			
United States 6% stock redeemed,	$ 13,000.00		
Farmers' Bank of Virginia stock sold,	9,762.00		
United States Bank stock,	78,350.00		
Loans to individuals, repaid to Literary Fund	80,000.00		
Loans to Washington College, repaid to Literary Fund	2,000.00	183,112.00	
Total Cash Receipts,			5,082,322.84
			$5,176,344.26

STATEMENT "C".

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

DISBURSEMENTS:—

For account of the primary schools:—		
Paid from income from investments,	$2,400,331.11	
Paid from Capitation Tax,	655,908.73	$3,056,239.84
University of Virginia, (at Charlottesville),		613,000.00
Institute for the Deaf, Dumb and Blind, (at Staunton),		40,821.01
Virginia Military Institute—support,		28,500.00
Margaret Academy, (Accomac County),		1,500.00
Salaries and Expenses of the Board—Statement "B," Schedule No. 5,		85,322.45
Premium paid on City of Richmond stock,		420.00
Investments in stocks, bonds, etc., at cost:—		
Farmers' Bank of Virginia stock,	$ 2,575.00	
Virginia revolutionary 6% bonds,	3,074.77	
James River Company stock,	44,855.00	
Bank of Virginia stock,	18,449.12	
University of Virginia, loan No. 5,	40,000.00	
" " " loans No. 6 and No. 7,	20,000.00	
Virginia Internal Improvement 5% bonds,	155,750.00	
" " " 6% bonds,	803,395.33	
James River Company bonds, issued under act passed February 17, 1820,	15,960.00	
Richmond Academy stock,	400.00	
Northwestern Bank of Virginia stock,	50,000.00	
Bank of Valley stock,	10,134.00	
Loan to Emory and Henry College,	18,000.00	
The Faculty of the medical department of the Hampden-Sidney College, at Richmond; amount invested in land and buildings,	25,000.00	
Paid into the Commonwealth Fund in accordance with act passed March 18, 1856,	50,562.55	
Davis's Book on Criminal Law, copyright purchased,	12,000.00	
Fairmont Bank stock,	50,000.00	
Medical College in the Valley of Virginia; investment in property at Winchester,	6,400.00	1,326,555.77
Total Cash Disbursements,		$5,152,359.00
Cash in Fund, January 1, 1861, per Statement "A",		23,985.18
		$5,176,344.18

The foregoing Statements and Schedules on pages 1 to 7, inclusive, certified correct:

CLIFFORD E. SCOVILLE. THOMAS BIRD DIXCY,
For the Defendant.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 7 inclusive, and find them correct, but that all items contained herein affecting this accounting are included in other Exhibits.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

STATEMENT "C".

(Concluded.)

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT E-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXEY
Certified Public Accountant
30 Church Street, New York
For the Defendant

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COMMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT E-1.

SUMMARY.

	Virginia.	West Virginia.
Assessed Valuation of Real Property as per latest obtainable Assessment Rolls, prior to June 20th, 1863	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863, (estimated in part)	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863	152,844,637.59	24,739,894.21
Total Amount of Income on which tax was levied as per latest obtainable Assessment Rolls, prior to June 20th, 1863	11,108,300.13	299.257.45
	$710,889,989.03	$113,142,996.70

The assessed valuation of Slaves for 1860 and 1861, not appearing on the original Assessment Rolls, it is agreed by the parties to this cause that in those counties for which no returns are found for 1862 and 1863, the number of slaves reported for 1860 and 1861 shall be taken and their value estimated on the basis of the average value of all Slaves in counties for which both number and value is reported in 1862 and 1863, making a separate calculation for each State.

Where number of slaves but no assessed valuation is reported in 1862 and 1863 the same average value as above is used.

We hereby certify that the within tables, consisting of pages 5 to 8 following, of which the above is a Summary, are taken from the original Assessment Rolls of the Commonwealth of Virginia, so far as available and from Auditors reports in other cases; that the said Summary is composed of items taken from the latest obtainable authentic sources of information prior to June 20th, 1863, and that the method adopted as above, of valuing the Slaves in those counties for which no value is shown in 1860 and 1861 is fair to both parties.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,469.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed Summary.....	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

Summary.

Plaintiff's Fair Estimated Valuation of Property, Real and Personal—		
In Virginia Counties, as above.....	$186,253,889.55	68.8636%
In West Virginia Counties, per contra.....	84,213,900.15	31.1364%
Total	$270,467,789.70	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 31.1364% as above		$11,767,756.77

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above named counties.	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these counties is 25% of this assessed valuation..		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		13,803,732.21	
(As per agreed summary....	$24,739,894.21)		16,537,772.71
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, in West Virginia Counties.....			$84,213,900.15

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...CLIFFORD By, real and per-
...ion noted above. $85,627,548.40

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S ALTERNATIVE METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are included as Personal Property, notwithstanding the fact that they had been emancipated by President Lincoln's Proclamation.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.....		$148,042,730.15
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary.	403,696,228.59	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
		$248,966,787.30

Summary.

Plaintiff's Fair Estimated Valuation of Property Real and Personal, with exceptions noted above:		
In Virginia, as above	$248,966,787.30	74.4085%
In West Virginia, per contra.....	85,627,548.40	25.5915%
	$334,594,335.70	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$37,794,211.18
Which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 25.5915% as above..... ..	$ 9,672,105.55

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that the assessed valuation is a fair estimated valuation		13,803,732.21	
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia counties..	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00	
(As per agreed summary..	$30,394,487.21)		17,951,420.96
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exception noted above.			$85,627,548.40

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ternative Estimate of the Valuation Notwithstanding the Fact That They Had Been Emancisment is Reduced From the Alleged G3% (as on

FAIR ESTIMATED VAI VEST VIRGINIA.

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laintiff claims that a fair estimated cation is 50% of this assessed valua

otal Valuation of Personal Property cluding Slaves but excluding Incom latest obtainable assessment, as agreed summary .....

laintiff claims that for the purpos this Exhibit a fair estimated valu is 25% of this assessed valuation ..

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COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

DEFENDANT'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia, on the basis of the Fair Estimated valuations of the Property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

	Virginia.	West Virginia.
Assessed Valuation of Real Property at latest obtainable assessment, as per agreed Summary	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves at latest obtainable assessment, as per agreed Summary	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves, at latest obtainable assessment, as per agreed Summary	152,844,637.59	24,739,894.21
Total amount of Income on which tax was levied, at latest obtainable assessment, as per agreed Summary	11,108,300.13	299,257.45
Total	$710,889,989.03	$113,142,996.70

Defendant claims that the assessed valuation here shown is a Fair Estimated Valuation to be used as the basis for the division of the Ordinary Expenses of Government, viz.:

Virginia	$710,889,989.03	86.2696%
West Virginia	113,142,996.70	13.7304%
	$824,032,985.73	100 %

Defendant further claims that the Ordinary Expenses of Government from March 19th, 1823, to December 31st, 1860, amount to $18,207,684.29

as shown in Joint Exhibit D-1, and that the amount to be charged to West Virginia is 13.7304% as above..... $ 2,499,987.88

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being used as a FAIR ESTIMATE of the valuation; objects to the inclusion of income, on which tax is levied, as Personal Property; objects to Slaves being considered Personal Property; objects to the use of the percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified correct as to figures and calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

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No. 6.

DEAF, DUMB AND BLIND INSTITUTE.

This Institute was established under an Act of March 31st, 1838, page 32, Chapter 19, authorizing an appropriation out of the revenue of the Literary Fund, for an amount not exceeding $20,000, for purpose of procuring a site or sites and erecting necessary buildings, etc.

Payments were made as follows:

Year	1839	$10,000.00	
"	1841	5,000.00	
"	1842	2,500.00	
"	1843	2,500.00	
			$20,000.00

An Act of March 20th, 1841, page 37, Chapter 14, authorized the payment of $6,250 for purchase of furniture, musical instruments, books, etc., apparatus, and other articles, required for the outfit of the Institution. Payment was made in 1841 in two amounts—viz: $1,562.50 and $4,687.50. Total..... 6,250.00

An Act of January 23rd, 1845, page 13, Chapter 9, authorized an appropriation of $25,000 for completion of the buildings of the Institution, provided that the aforesaid appropriation should be so expended as to fully complete the said buildings in such mode and style as such appropriations would warrant.

Payments were made as follows:

Year	1845	$ 4,166.66	
"	1846	4,166.66	
"	1846	4,166.66	
"	1847	4,166.66	
"	1847	4,166.66	
"	1848	488.66	
			21,321.96

An Act of March 20th, 1847, page 230, Chapter 272, authorized a payment of $5,998.98 to William C. Adams, or his legal representative, being an allowance on account of work done, materials furnished, etc., in erection of buildings.

Payment was made in 1847..... 5,998.98

An Act of February 24th, 1846, page 20, Chapter 18, authorized a payment of $5,000 for necessary furniture and fixtures.

Payments were made as follows:

Year	1846	$ 2,500.00	
"	1847	2,500.00	
			5,000.00

Carried forward $58,570.94

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Brought forward		$58,570.94
An Act of March 16th, 1847, page 16, Chapter 15, provided among other things for the following—viz: $2,000 for the purchase of 20 acres of land adjoining and lying south of the present Institution lot; $1,000 for the purchase of raised and common types, moulds, and other printing apparatus as may be required; $2,300 for the purchase of materials, machines and tools for the various workshops of said Institution, and for the completion of said workshops. Payments were made in 1848		5,300.00
An Act of January 25th, 1849, page 14, Chapter 12, authorized payment of an amount not to exceed $4,000 for the erection of a plain, substantial brick building of sufficient size to contain a laundry and bakehouse, and accommodations for servants. Payment was made in 1849		4,000.00
An Act of March 7th, 1851, page 5, Chapter 2, authorthorized payment of $2,500 for completing the buildings of the Institution. Payment was made in 1851		2,500.00
An Act of March 14th, 1850, page 4, Chapter 1, authorized payment of $6,000 for furniture for increased number of pupils in the Institution under Act of March 16th, 1847, and for arrears in support of Institution. Payment was made in 1850.....		6,000.00
An Act of June 5th, 1852, page 29, Chapter 35, authorized the payment of $2,000 for purchase of a library, philosophical apparatus and an organ.		
Payments were made as follows:		
Year 1852	$ 1,000.00	
" 1853	1,000.00	
		2,000.00
An Act of February 24, 1853, page 126, Chapter 145, authorized the following payments: $7,000 for construction of fixtures for warming buildings; $5,000 for construction of apparatus for lighting buildings with gas; $8,000 for the erection of an additional building.		
Payments were made as follows:		
Year 1853	$ 5,000.00	
" 1853	2,500.00	
" 1854	10,000.00	
" 1855	2,500.00	
		20,000.00
An Act of March 4th, 1854, page 30, Chapter 41, authorized payment of $10,000 for permanent water supply. Payment was made in 1854.....		10,000.00
Carried forward		$108,370.94

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Page 7

Brought forward		$108,370.94
An Act of March 13th, 1856, page 80, Chapter 93, authorized the following payments: $3,000 for additional boiler, and erection of suitable boiler house to complete the heating of the buildings by steam; $1,000.00 for purchase of fire engine and erection of engine house; $1,500 for purchase of an organ, in addition to amount appropriated by former Act; $1,000 for fencing grounds, and $2,841 for deficiency of Chapel Steam and Gas Fund.		
Payments were made as follows:		
Year 1856	$ 8,341.00	
" 1857	1,000.00	
		9,341.00
An Act of January 10th, 1860, page 106, Chapter 12, authorized an appropriation of $7,000 for the erection of a shop building and to warm and light same with steam and gas. Payment was made in 1860.....		7,000.00
		$124,711.94
Less		
Amounts included by defendant in ordinary expenses of government:		
Under Act of March 20th, 1841.....	$ 6,250.00	
do Feb. 24th, 1846	5,000.00	
do March 16th, 1847	3,800.00	
do March 14th, 1850	6,000.00	
do June 5th, 1852	2,000.00	
do March 13th, 1856 (purchase of organ), ...	1,500.00	
	$24,050.00	
Original buildings under Act of March 31st, 1838....	20,000.00	
		44,050.00
Net amount plaintiff claims as an addition to defendant's ordinary expenses on this account		$ 80,661.94

No. 11.

VIRGINIA MILITARY INSTITUTE.

This Institute was established under an Act of March 29th, 1839, entit

"An Act amending and reducing into one the several Acts concer the reorganization of the Lexington Arsenal and the establishment there of a Military School at Washington College."

An Act of March 6th, 1840, page 26, Chapter 15, authorized an appropriation of $4,500 for the erection of a steward's house and for furnishing a supply of water for the Institute, to be paid as follows: $1,500 in the year 1840, $1,500 in 1841 and $1,500 in 1842. Payments were made accordingly ..... $ 4,5

An Act of February 14th, 1844, page 22, Chapter 27, authorized appropriation of an amount not exceeding $1,000 for the erection of a magazine and shelter for artillery at the Institute. Payment was made in 1845 1,0

An Act of March 7th, 1848, page 18, Chapter 17, authorized an appropriation of $4,500 for erecting a house for an additional Professor; also a hospital, at the Institute. Payment was made in 1848..... 4,5

An Act of March 8th, 1850, page 16, Chapter 19, authorized an appropriation of $46,000—viz: $11,500 a year for four years, for construction of suitable buildings for cadets' quarters, and for other purposes, as specified in the report of the Board of Visitors of September 15th, 1849.

Payments were made as follows:

Year 1850	$11,500.00	
" 1851	29,500.00	
		41,0

An Act of June 5th, 1852, page 21, Chapter 20, appropriating the public revenue for fiscal year 1851-1852 authorizes payment of the balance of $5,000 for erection of new barracks, etc., under Act of March 8th, 1850 (above). Payment was made in 1852..... 5,0

An Act of May 29th, 1852, page 29, Chapter 34, makes provision for additional accommodation for the cadets of the Institute, the new barracks erected under Act of March 8th, 1850, being insufficient to accommodate the additional cadets. This Act also mentions that an addition of funds is needed for the purpose of improved heating and lighting arrangements. An amount of $30,000 was appropriated for these purposes. Payment was made in 1852..... 30,0

Carried forward ..... $ 86,0

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Brought forward		$ 85,000.00
An Act of March 1st, 1854, page 31, Chapter 42, provided for the completion of the barracks, and the erection of a mess hall at the Institute. An amount of $20,000 was appropriated for these purposes to be paid in four installments of $5,000 each.		
Payments were made as follows:		
Year 1854	$15,000.00	
" 1855	5,000.00	
		20,000.00
An Act of March 31st, 1858, page 115, Chapter 162, provides for the completion of Institute buildings, enclosing its grounds, and procuring a supply of water for said Institute. An appropriation of $25,000 was made as follows: $16,000 to meet the deficiency in Building Fund and complete the barracks and mess hall; $6,000 for procuring a supply of water, and $3,000 for enclosing the grounds.		
Payments were made as follows:		
Year 1858	$10,000.00	
" 1859	9,000.00	
" 1860	6,000.00	
		25,000.00
An Act of March 28th, 1860, page 103, Chapter 7, makes an appropriation of $20,000 for additional buildings. Payment was made in 1860		20,000.00
Total		$151,000.00

No. 12.

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UNIVERSITY OF VIRGINIA, $25,000.00.

This payment was authorized by the Act of February 28th, 1854, Chapter 36, page 26, as follows:

"Appropriated to the University of Virginia the sum of $25,000.00 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said institution."

No. 13.

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IMPROVEMENTS PUBLIC SQUARE, $1,456.91.

This amount covers sundry expenditures for the improvement of the quare, for work done at the Capitol, for laying water pipes, and for items f $75, being quarterly allowance to the superintendent of the Capitol Square a 1826 and 1827. While the books do not show the exact nature of the im- rovements, they were charged to "Public Improvements" account on the ooks of the Commonwealth.

No. 13.

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IMPROVEMENTS CAPITOL SQUARE, $12,278.47.

The items making up this total are as follows:

From General Appropriation:	
1825—For guard house	$ 2,700.00
1834—For "graduation" of the grounds about the Capitol, etc.	4,127.53
1838—For water system in Capitol and Governor's house	2,285.70
1851—New gas system	1,024.14
1851— do	880.94
1855—Purchase of lot adjoining Square—Act of April 3rd, 1848	1,260.00
Total	$12,278.47

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No. 15.

PENITENTIARY.

An Act of March 9th, 1833, page 18, Chapter 19, authorized an appropriation, not to exceed $7,000.00, for the erection of a hospital, buildings and sheds for the preservation of timber and manufactured articles, and if necessary to enlarge a part of the outer walls to take them within the enclosure.

An Act of March 11th, 1834, page 6, Chapter 2, authorized an appropriation of $2,500.00 for completing the improvements at the Penitentiary.

Payments were made as follows:

Year	1833	$ 797.44	
"	1834	5,169.43	
"	"	150.00	
"	1835	37.80	
"	"	150.73	
"	"	41.58	
			$ 9,346.98

An Act of March 12th, 1835, page 5, Chapter 2, authorized payment of $3,000.00 to Charles L. Winfield for lots condemned to obtain supply of water for use of the Penitentiary. Payment was made in 1837 ..... 3,000.00

A general appropriation Act of March 5th, 1835, authorized payment of $1,600.50 for iron pipes for conducting water to the Penitentiary. Payment was made in 1840 ..... 1,600.50

Total $13,947.48

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Brought forward		$41,318.38
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not to exceed $12,000 for an addition to the asylum, to be paid in the following manner—viz: $6,000 when the contract is ratified and the bond duly executed, remaining $6,000 on completion of building, provided same shall not be less than twelve months after first payment is drawn.		
Payments were made as follows:		
Year 1842	$ 6,000.00	
" 1844	4,000.00	
		10,000.00
An Act of February 12th, 1844, page 17, Chapter 12, authorized payment of $2,000 for the erection of an additional building. Payment was made in 1844....		2,000.00
An Act of February 14th, 1844, page 16, Chapter 11, authorized payment of $5,000.00 for remodeling and repairing the body of the old building. Payment was made in 1844		5,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount not exceeding $25,000 for additional buildings, to be paid in the following manner—viz: $5,000 on ratification of contract; $5,000 on July 1st, 1848; $5,000 on January 1st, 1849; $5,000 on July 1st, 1849, and $5,000 on January 1st, 1850. Payments were made accordingly		25,000.00
An Act of January 13th, 1849, page 15, Chapter 13, authorized payment of $6,266 for furniture for the additional building, and for such clothing as might be necessary for the additional number of patients to be admitted, and to pay the excess of the price of the buildings contracted for over the appropriation. Payment was made in 1849.....		6,266.00
An Act of January 22nd, 1850, page 16, Chapter 17, authorized payment of an amount of $11,500 for arrears on buildings, and furnishing water and additional accommodation for free colored persons at the Asylum, also to purchase furniture for the new building. Payment was made in 1850.....		11,500.00
An Act of January 21st, 1853, page 126, Chapter 144, authorized payment of an amount of $7,000 for repairing and rebuilding buildings, etc., as follows: $661 for purchase of the "Six Chimney" lot; $1,839 on ratification of contract and execution of bond required; $2,500 after the work shall have been half completed, and $2,000 on completion of the contract hereby authorized.		
Payments were made as follows:		
Year 1853	$ 2,500.00	
" 1854	4,500.00	
		7,000.00
Carried forward		$108,084.38

County.	1860			
	Slaves.		Other Personal Property.	Incom
	Number.	Value.		
Brought forward	1,515	.....	$ 3,350,665.00	$ 27,9
Gilmer	21	.....	161,522.00	1,6
Greenbrier	996	.....	1,808,705.00	33,2
Hampshire	729	.....	1,082,218.00	14,2
Hancock	1	.....	262,146.00	4
Hardy	645	.....	942,419.00	5,6
Harrison	292	.....	1,083,482.00	5,7
Jackson	42	.....	294,986.00	4,2
Jefferson	2,256	.....	1,910,687.00	24,3
Kanawha	1,238	.....	720,969.00	30,2
Lewis	103	.....	432,826.00	5,2
Logan	30	.....	120,156.00	.....
McDowell	.....	.....	31,138.00	.....
Marion	46	.....	717,028.00	10,6
Marshall	20	.....	340,471.00	3,7
Mason	200	.....	548,385.00	2,5
Mercer	192	.....	279,050.00	1,5
Monongalia	69	.....	1,071,376.00	4,7
Monroe	611	.....	1,408,522.00	12,5
Morgan	60	.....	186,232.00	1
Nicholas	85	.....	264,084.00	1,6
Ohio	21	.....	347,555.00	1,6
Ohio, Wheeling	2	.....	470,005.00	95,7
Pendleton	138	.....	523,324.00	1,8
Pleasants	7	.....	129,035.00	8
Pocahontas	.....	.....	.....	.....
Preston	41	.....	679,170.00	2,5
Putnam	353	.....	299,725.00	9
Raleigh	28	.....	125,355.00	1,0
Randolph	107	.....	306,617.00	1,5
Ritchie	12	.....	261,832.00	2,7
Roane	35	.....	158,731.00	2,1
Taylor	68	.....	361,874.00	8
Tucker	17	.....	77,679.00	6
Tyler	7	.....	308,536.00	9
Upshur	97	.....	401,914.00	2,2
Wayne	74	.....	363,127.00	1,0
Webster	.....	.....	21,554.00	.....
Wetzel	8	.....	19,060.00	4
Wirt	17	.....	110,893.00	1,4
Wood	82	.....	683,030.00	29,7
Wyoming	36	.....	121,083.00	5
Total	10,301	.....	$22,787,166.00	$339,0

1861					1862					
Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves	
	Number.	Value.			Number.	Value.			Number.	
$ 27,970.00	1,116	.....	$ 1,473,113.00	$ 5,673.00	.....	.....	.....	.....	.....	
1,601.00	28	.....	175,772.00	935.00	.....	.....	.....	.....	.....	
33,240.32	984	.....	1,902,530.00	18,250,26	1,419	$ 599,761.00	$1,883,100.00	$10,295.00	228	$
14,207.50	.....	.....	.....	.....	.....	.....	.....	.....	.....	
450.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
5,679.00	641	.....	1,014,392.00	7,710.00	.....	.....	.....	.....	.....	
5,751.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
4,217.00	41	.....	303,932.00	600.00	.....	.....	.....	.....	.....	
24,365.00	2,256	.....	1,888,233.00	13,190.20	.....	.....	.....	.....	.....	
30,271.00	1,237	.....	749,570.00	28,542.00	.....	.....	.....	.....	... .	
5,246.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
.....	.....	.....	35,595.00	.....	.....	.....	.....	.....	.....	
10,600.00	.....	.....	.....	.....	.....	.....	33,995.00	.....	177	
3,758.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
2,500.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1,500.00	191	.....	300,545.00	.....	.....	.....	.....	.....	.....	
4,700.00	.....	.....	.....	.....	301	95,370.00	308,960.00	30.00	176	
12,588.00	627	.....	1,416,431.00	5,663.00	.....	.....	.....	.....	.....	
150.00	59	.....	202,144.00	400.00	1,136	401,830.00	1,541,052.00	1,687.00	1,052	
1,636.00	76	.....	237,162.00	50.00	.....	.....	.....	.....	.....	
1,600.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
95,748.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1,805.00	139	.....	520,629.00	15.00	201	61,450.00	555,093.00	80.00	155	
800.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
.....	139	.....	470,156.00	.....	.....	.....	.....	.....	.....	
2,500.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
930.00	345	.....	332,887.00	540.00	.....	.....	.....	.....	.....	
1,000.00	35	.....	134,835.00	.....	.....	.....	.....	.....	.....	
1,561.00	20	.....	126,805.00	.....	.....	.....	.....	.....	.....	
2,726.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
2,130.00	37	.....	185,404.00	1,440.00	.....	.....	.....	.....	.....	
800.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
698.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
948.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
2,202.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1,045.00	77	.....	380,000.00	265.00	.....	.....	.....	.....	.....	
.....	.....	.....	59,546.21	.....	.....	.....	.....	.....	.....	
430.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
1,470.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
29,758.50	.....	.....	.....	.....	.....	.....	.....	.....	.....	
506.00	35	.....	112,066.00	.....	.....	.....	.....	.....	.....	
$339,087.32	8,983	.....	$12,021,747.21	$83,273.46	3,057	$1,158,411.00	$4,322,200.00	$12,092.00	2,488	$1

1863				Total of Latest Assessment.					County.
Slaves		Other Personal Property.	Income.	Slaves		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.				
.....	.....	.....	.....	1,514	$ 739,208.00	$ 3,411,867.00	$ 28,208.00	$13,466,302.00	
.....	.....	.....	.....	28	*13,671.00	175,772.00	935.00	769,507.31	Gilmer.
928	$ 745,220.00	$2,252,197.00	$17,630.75	928	745,220.00	2,252,197.00	17,630.75	3,466,378.52	Greenbrier.
.....	.....	.....	.....	729	*355,934.00	1,082,218.00	14,207.50	3,958,442.86	Hampshire.
.....	.....	.....	.....	1	*488.00	262,146.00	450.00	909,007.51	Hancock.
.....	.....	.....	.....	641	*312,968.00	1,014,392.00	7,710.00	2,911,771.10	Hardy.
.....	.....	.....	.....	292	*142,569.00	1,083,482.00	5,751.00	3,797,604.16	Harrison.
.....	.....	.....	.....	41	*20,018.00	303,932.00	600.00	1,648,682.47	Jackson.
.....	.....	.....	.....	2,256	*1,101,492.00	1,888,233.00	13,190.20	6,802,928.00	Jefferson.
.....	.....	.....	.....	1,237	*603,965.00	749,570.00	28,542.00	3,287,882.51	Kanawha.
.....	.....	.....	.....	103	*50,290.00	432,826.00	5,246.00	1,278,235.39	Lewis.
.....	.....	.....	.....	30	*14,647.00	120,156.00	.....	388,650.94	Logan.
177	19,295.00	29,455.00	.....	177	19,295.00	29,455.00	.....	173,698.05	McDowell.
.....	.....	.....	.....	46	*22,459.00	717,028.00	10,600.00	2,721,068.13	Marion.
.....	.....	.....	.....	20	*9,765.00	340,471.00	3,758.00	2,371,997.95	Marshall.
.....	.....	.....	.....	200	*97,650.00	548,385.00	2,500.00	2,814,941.08	Mason.
176	123,615.00	368,388.00	.....	176	123,615.00	368,388.00	.....	679,564.35	Mercer.
.....	.....	.....	.....	69	*33,689.00	1,071,376.00	4,700.00	2,954,126.46	Monongalia.
1,052	569,325.00	2,010,111.00	12,853.50	1,052	569,325.00	2,010,111.00	12,853.50	3,399,322.99	Monroe.
.....	.....	.....	.....	59	*28,807.00	202,144.00	400.00	740,758.44	Morgan.
.....	.....	.....	.....	76	*37,107.00	237,162.00	50.00	778,012.33	Nicholas.
.....	.....	.....	.....	21	*10,253.00	347,555.00	1,600.00	5,074,553.00	Ohio.
.....	.....	.....	.....	2	*976.00	470,005.00	95,748.00	.....	Wheeling.
155	91,450.00	786,301.00	.....	155	91,450.00	786,301.00	.....	1,098,709.70	Pendleton.
.....	.....	.....	.....	7	*3,418.00	129,035.00	800.00	577,606.79	Pleasants.
.....	.....	.....	.....	139	*67,867.00	470,156.00	.....	1,189,733.24	Pocahontas.
.....	.....	.....	.....	41	*20,018.00	679,170.00	2,500.00	1,679,082.61	Preston.
.....	.....	.....	.....	345	*168,446.00	332,887.00	540.00	982,826.02	Putnam.
.....	.....	.....	.....	35	*17,089.00	134,835.00	.....	498,330.90	Raleigh.
.....	.....	.....	.....	20	*9,765.00	126,805.00	.....	1,136,745.77	Randolph.
.....	.....	.....	.....	12	*5,859.00	261,832.00	2,726.00	1,166,737.79	Ritchie.
.....	.....	.....	.....	37	*18,065.00	185,404.00	1,440.00	468,005.20	Roane.
.....	.....	.....	.....	68	*33,201.00	361,871.00	800.00	1,241,003.36	Taylor.
.....	.....	.....	.....	17	*8,300.00	77,679.00	698.00	288,520.66	Tucker.
.....	.....	.....	.....	7	*3,418.00	308,536.00	948.00	878,326.00	Tyler.
.....	.....	.....	.....	97	*47,360.00	401,914.00	2,202.00	1,329,680.83	Upshur.
.....	.....	.....	.....	77	*37,595.00	380,000.00	265.00	1,135,038.58	Wayne.
.....	.....	.....	.....	.....	....	59,546.21	.....	216,085.00	Webster.
.....	.....	.....	.....	8	*3,906.00	19,060.00	430.00	789,068.00	Wetzel.
.....	.....	.....	.....	17	*8,300.00	110,893.00	1,470.00	508,578.48	Wirt.
.....	.....	.....	.....	82	*40,036.00	683,930.00	29,758.50	2,600,610.50	Wood.
.....	.....	.....	.....	35	*17,089.00	112,066.00	.....	271,127.06	Wyoming.
2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,897	$5,654,592.00	$24,739,894.21	$299,257.45	$82,449,252.04	

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA *vs* STATE OF WEST VIRGINIA.

COMPARISON OF ASSESSED VALUATION OF ALL PROPERTY FROM 1867 TO 1908 INCLUSIVE.

{ Virginia and } { West Virginia }

PLAINTIFF'S EXHIBIT E-3.

VIRGINIA FIGURES TAKEN FROM VIRGINIA AUDITORS REPORT FOR RESPECTIVE YEARS.

WEST VIRGINIA FIGURES TAKEN FROM "BIENNIAL REPORT OF THE AUDITOR" OF WEST VIRGINIA FOR 1907-8. PAGE 126 STATEMENT LXVIII.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

PLAINTIFF'S EXHIBIT E-3.

TOTAL ASSESSED VALUATION OF REAL ESTATE, PERSONAL AND RAILROAD PROPERTY IN VIRGINIA AND WEST VIRGINIA WITH PERCENTAGES OF EACH TO THE TOTAL.

NOTE.—The Assessed Valuation of Railroads from 1867 to 1879, inclusive, in Virginia is not shown in Auditor's reports, so we estimate their value at $9,000,000.00 and add that amount in each year.

1867	Virginia	$354,848,482.69	73.79%
	West Virginia	126,060,743.00	26.21%
1868	Virginia	357,699,144.00	72.17%
	West Virginia	137,952,255.00	27.83%
1869	Virginia	363,480,163.33	72.41%
	West Virginia	138,510,065.00	27.59%
1870	Virginia	388,537,534.00	73.40%
	West Virginia	140,783,286.00	26.60%
1871	Virginia	370,202,374.38	72.07%
	West Virginia	143,436,703.00	27.93%
1872	Virginia	351,552,630.38	71.05%
	West Virginia	143,270,414.00	28.95%
1873	Virginia	345,686,411.23	70.19%
	West Virginia	146,845,522.00	29.81%
1874	Virginia	341,428,256.00	69.72%
	West Virginia	148,305,419.00	30.28%
1875	Virginia	335,309,651.49	68.09%
	West Virginia	157,118,644.00	31.91%
1876	Virginia	330,317,488.75	68.49%
	West Virginia	151,977,231.00	31.51%
1877	Virginia	332,989,771.56	68.70%
	West Virginia	151,681,708.00	31.30%
1878	Virginia	325,686,872.31	68.90%
	West Virginia	147,021,912.00	31.10%
1879	Virginia	328,393,559.22	69.04%
	West Virginia	147,266,120.00	30.96%
1880	Virginia	317,191,383.17	68.33%
	West Virginia	146,991,740.00	31.67%
1881	Virginia	333,469,913.75	68.76%
	West Virginia	151,479,428.00	31.24%
1882	Virginia	343,813,689.50	68.92%
	West Virginia	155,050,076.00	31.08%
1883	Virginia	353,975,149.88	67.00%
	West Virginia	174,309,734.00	33.00%
1884	Virginia	364,638,390.03	67.34%
	West Virginia	176,796,754.00	32.66%
1885	Virginia	383,723,692.70	68.07%
	West Virginia	179,958,334.00	31.93%
1886	Virginia	375,375,333.50	68.33%
	West Virginia	173,993,762.00	31.67%
1887	Virginia	375,043,238.31	67.28%
	West Virginia	182,346,389.06	32.72%
1888	Virginia	$380,429,882.52	67.95%
	West Virginia	179,385,329.00	32.05%
1889	Virginia	384,014,695.75	67.68%
	West Virginia	183,381,499.75	32.32%
1890	Virginia	404,923,584.55	68.38%
	West Virginia	187,165,353.61	31.62%
1891	Virginia	439,832,800.41	69.44%
	West Virginia	193,533,458.00	30.56%
1892	Virginia	448,039,022.67	67.28%
	West Virginia	217,858,413.64	32.72%
1893	Virginia	453,151,823.73	67.09%
	West Virginia	222,218,154.37	32.91%
1894	Virginia	450,277,768.08	67.17%
	West Virginia	220,007,517.00	32.83%
1895	Virginia	438,258,777.14	66.17%
	West Virginia	224,025,744.40	33.83%
1896	Virginia	451,931,676.89	67.69%
	West Virginia	215,669,932.30	32.31%
1897	Virginia	459,623,847.08	67.75%
	West Virginia	218,517,105.72	32.25%
1898	Virginia	462,892,204.46	67.57%
	West Virginia	222,195,486.10	32.43%
1899	Virginia	469,732,937.09	67.28%
	West Virginia	228,409,289.26	32.72%
1900	Virginia	488,773,981.77	66.95%
	West Virginia	241,313,244.18	33.05%
1901	Virginia	497,956,642.30	66.69%
	West Virginia	248,749,692.90	33.31%
1902	Virginia	501,284,776.89	67.67%
	West Virginia	239,476,148.94	32.33%
1903	Virginia	519,352,393.00	65.82%
	West Virginia	269,644,299.60	34.18%
1904	Virginia	533,757,406.00	65.76%
	West Virginia	277,859,198.92	34.24%
1905	Virginia	571,997,927.00	63.05%
	West Virginia	335,203,005.85	36.95%
1906	Virginia	597,835,020.00	40.42%
	West Virginia	881,285,710.95	59.58%
1907	Virginia	632,285,784.00	40.48%
	West Virginia	929,663,694.63	59.52%
1908	Virginia	661,796,631.00	41.38%
	West Virginia	937,232,718.54	58.62%

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT 5-A

Printed by
LEDOUX WARTHMUELLER & CO.
Chartered Accountants,
11 William Street, New York.

For the Plaintiff

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA ON THE BASIS OF THE FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES OF THE STATE OF VIRGINIA.

PARAGRAPH V OF DECREE.

Ordinary expenses of government from March 19th, 1823, to December 31st, 1860, inclusive		$37,794,211.18
Divided on basis of fair estimated valuation shown in plaintiff's Exhibit E-7 (Slaves excluded from Personal Property):		
Virginia	69.2034% $26,154,879.14	
West Virginia	30.7966%	$11,639,332.04
Alternative division on basis of fair estimated valuation if slaves are included as personal property, as shown in plaintiff's Exhibit E-7:		
Virginia	72.5780%=$27,430,282.59	
West Virginia	27.4220%	$10,363,928.59

We certify that the above calculations are correctly made from percentage not prepared by us.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & COMPANY,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

THE VALUATION OF SLAVES IN 1860 AND 1861.

COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES IN 1862 AND 1863.

DEFENDANT'S EXHIBIT E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

OMMONWEALTH OF VIRGINIA VERSUS STATE OF WEST VIRGINIA.

Defendant's Exhibit E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

HE NUMBER OF SLAVES IN 1860 AND 1861, BASED ON THE ASSESSMENT ROLLS OF COUNTIES FOR WHICH RETURNS WERE FOUND, AND THE VALUE THEREOF, COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES FOR WHICH RETURNS WERE FOUND IN 1862 AND 1863:

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
IRGINIA:				
Accomac,	2,645	$ 1,326,732	2,739	$ 1,373,882
Albemarle	.....	.....	7,449	3,736,418
Alexandria,	709	355,634	709	355,634
Alleghany,	589	295,442	522	261,835
Amelia,	4,269	2,141,330	4,195	2,104,212
Amherst,	3,211	1,610,638	3,405	1,707,948
Appomattox,	2,444	1,225,910	2,526	1,267,042
Augusta,	2,545	1,276,572	2,587	1,297,639
Staunton,	....	.....	441	221,206
Bath,	475	238,260	517	259,327
Bedford,	5,303	2,659,985	5,660	2,839,056
Bland,	....	.....	113	56,681
Botetourt,	1,728	866,765	1,671	838,174
Brunswick,	5,209	2,612,834	5,381	2,699,110
Buchanan,	14	7,022	13	6,521
Buckingham,	4,827	2,421,223	4,866	2,440,786
Campbell,	4,932	2,473,891	4,981	2,498,470
Lynchburg,	1,822	913,915	1,611	808,078
Caroline,	6,029	3,024,146	6,074	3,046,718
Carroll,	65	32,604	104	52,166
Charles City,	1,783	894,353	1,877	941,503
Charlotte,	5,489	2,753,282	5,560	2,788,896
Chesterfield,	....	.....	....	.....
Clarke,	1,834	919,934	1,798	901,877
Craig,	215	107,844	225	112,860
Culpeper,	3,245	1,627,692	3,259	1,634,714
Cumberland,	3,899	1,955,738	3,834	1,923,134
Dinwiddie,	3,918	1,965,269	4,010	2,011,416
Petersburg,	3,538	1,774,661	3,453	1,732,025
Elizabeth City,	....	.....	1,196	599,914
Essex,	3,921	1,966,774	3,873	1,942,697
Fairfax,	1,607	806,071	1,611	808,078
Fauquier,	5,025	2,520,540	5,016	2,516,026
Floyd,	224	112,358	244	122,390
Fluvanna,	2,877	1,443,103	2,883	1,446,113
Franklin,	3,330	1,670,328	3,394	1,702,430
Frederick,	844	423,350	824	413,318
Winchester,	330	165,528	342	171,547
Giles,	444	222,710	438	219,701
Gloucester,	3,038	1,523,861	3,053	1,531,385
Goochland,	3,507	1,759,111	....	.....
Grayson,	280	140,448	294	147,470
Greene,	981	492,070	997	500,095
Greensville,	2,213	1,110,041	2,280	1,143,648
Halifax,	8,696	4,361,914	8,818	4,423,109
Hanover,	4,984	2,499,974	5,115	2,565,684
Henrico,	3,860	1,936,176	4,494	2,254,190
Richmond City,	7,639	3,831,722	6,474	3,247,358
Henry,	2,678	1,343,285	2,779	1,393,946
Forward,	127,215	$63,811,040	133,705	$67,066,427

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
Forward,	127,215	$63,811,040	133,705	$67,066,427
Highland,	208	104,333	219	109,850
Isle of Wight,	1,040	521,664	2,148	1,077,437
James City,	1,141	572,326	1,162	582,859
Williamsburg,	405	203,148	410	205,656
King and Queen,	3,288	1,649,261	3,406	1,708,459
King George,	2,066	1,036,306	1,984	995,174
King William,	2,916	1,462,666	3,248	1,629,197
Lancaster,	1,605	805,068	1,583	794,033
Lee,	486	243,778	481	241,270
Loudoun,	3,063	1,536,401	3,000	1,504,800
Louisa,	5,429	2,723,186	5,366	2,691,586
Lunenburg,	4,163	2,088,161	4,212	2,112,739
Madison,	2,408	1,207,853	2,373	1,190,297
Mathews,	1,507	755,911	1,479	741,866
Mecklenburg,	7,392	3,707,827	7,506	3,765,010
Middlesex,	1,526	765,442	1,550	777,490
Montgomery,	1,141	572,326	1,173	588,377
Nansemond,	2,571	1,289,614	2,677	1,342,783
Nelson,	3,215	1,612,644	3,158	1,584,053
New Kent,	1,780	892,848	1,808	906,893
Norfolk,	2,887	1,448,119	2,751	1,379,902
Norfolk City,	1,997	1,001,695	1,951	978,622
Portsmouth,	736	369,178	689	345,602
Northampton,	....	.....	2,250	1,128,600
Northumberland,	1,733	869,273	1,823	914,417
Nottoway,	3,856	1,934,170	3,953	1,982,825
Orange,	3,309	1,659,794	3,486	1,748,572
Page,	495	248,292	483	242,273
Patrick,	1,026	514,642	1,024	513,638
Pittsylvania,	7,417	3,720,367	7,171	3,596,974
Danville,	763	382,721	573	287,417
Powhatan,	3,177	1,593,583	3,156	1,583,050
Prince Edward,	4,352	2,182,963	4,279	2,146,346
Prince George,	2,894	1,451,630	2,926	1,467,652
Prince William,	1,269	636,530	1,243	623,489
Princess Anne,	1,818	911,909	224	112,358
Pulaski,	918	460,469	928	465,485
Rappahannock,	1,721	863,254	1,748	876,787
Richmond,	1,373	688,697	1,384	694,214
Roanoke,	1,603	804,065	1,580	792,528
Rockbridge,	2,328	1,167,725	2,273	1,140,137
Rockingham,	1,268	636,029	1,241	622,486
Russell,	516	258,826	573	287,417
Scott,	324	162,518	331	166,030
Shenandoah,	484	242,774	457	229,231
Smyth,	508	254,813	500	250,800
Southampton,	3,174	1,592,078	3,141	1,575,536
Spottsylvania,	2,382	1,194,811	3,409	1,709,954
Fredericksb'g,	724	363,158	685	343,596
Stafford,	1,575	790,020	1,545	774,972
Surry,	1,552	778,483	1,544	774,470
Sussex,	3,604	1,807,766	3,598	1,804,757
Tazewell,	676	339,082	670	336,072
Warren,	804	403,286	822	412,315
Warwick,	602	301,963	616	308,988
Washington,	1,319	661,610	1,375	689,700
Westmoreland,	2,088	1,047,341	2,153	1,079,945
Wise,	34	17,054	38	19,061
Wythe,	1,116	559,786	1,120	561,792
York,	999	501,098	990	496,584
Total,	243,986	$122,383,375	253,351	$127,018,865

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
ST VIRGINIA:				
rbour,	68	$ 33,201	....	.....
rkeley,	911	444,796	926	$ 452,120
one,	86	41,990	....	.....
axton,	54	26,366	57	27,830
ooke,	5	2,441	....	.....
abell,	216	105,462	....	.....
lhoun,	6	2,930	....	.....
ay,	25	12,206	9	4,394
oddridge,	17	8,300	....	.....
ayette,	127	62,008	124	60,543
lmer,	21	10,253	28	13,671
reenbrier,	996	486,297	984	480,438
ampshire,	729	355,934	....	.....
ancock,	1	488	....	.....
ardy,	645	314,921	641	312,968
arrison,	292	142,569	....	.....
ckson,	42	20,507	41	20,018
fferson,	2,256	1,101,492	2,256	1,101,492
anawha,	1,238	604,454	1,237	603,965
ewis,	103	50,290	....	.....
gan,	30	14,648	....	.....
cDowell,	....	.....	....	.....
arion,	46	22,460	....	.....
arshall,	20	9,765	....	.....
ason,	200	97,650	....	.....
ercer,	192	93,744	191	93,256
onongalia,	69	33,689	....	.....
onroe,	611	298,321	627	306,133
organ,	60	29,295	59	28,807
icholas,	85	41,501	76	37,107
hio,	21	10,253	....	.....
Wheeling,	2	977	....	.....
endleton,	138	67,379	139	67,867
easants,	7	3,418	....	.....
ocohontas,	....	.....	139	67,867
reston,	41	20,018	....	.....
utnam,	353	172,352	345	168,446
aleigh,	28	13,671	35	17,089
andolph,	107	52,243	20	9,765
itchie,	12	5,859	....	.....
oane,	35	17,089	37	18,065
aylor,	68	33,201	....	.....
ucker,	17	8,300	....	.....
yler,	7	3,418	....	.....
pshur,	97	47,360	....	.....
ayne,	74	36,131	77	37,595
ebster,	....	.....	....	.....
etzel,	8	3,906	....	.....
irt,	17	8,300	....	.....
ood,	82	40,037	....	.....
yoming,	36	17,577	35	17,089
Total,	10,301	$5,029,467	8,083	$3,946,525

NOTE: The valuation of slaves for 1860 and 1861 is based on the average assessed valuation of slaves in 1862 and 1863, as shown by the original assessment rolls of counties reporting both the number and value.

Such values are:

For Virginia,	$501.60
For West Virginia,	488.25

Certified Correct:

CLIFFORD E. SCOVILLE, THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff objects to the use of the average assessed valuation of Slaves in 1862 and 1863 as a basis of their assessed valuation in 1860 and 1861, as the Records of the Commonwealth of Virginia clearly show that slaves were assessed in the last mentioned years at 40c per $100 of value and as the tax levied on all slaves over 12 years was $1.20, their assessed valuation was $300; and for the further reason that in 1862 and 1863 the assessed value of the slaves in Virginia was estimated with reference to Confederate money as a standard of value.

We have checked all figures in this exhibit consisting of pages 1, 2, and 3, and find them to be correct.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

DEFENDANT'S EXHIBIT E 3.

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Defendant's Exhibit E-3

DEFENDANT'S ALTERNATIVE METHOD OF DETERMINING

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WH

STATE OF WEST VIRGINIA AT JUNE 20TH, 1863.

Treasury Department
Office of the Government Actuary.
Form No. 11-Ed. 5-17-95-1,000.

COPY OF A STATEMENT FURNISHED BY THE TREASURY DEPARTMENT OF THE UNITED STATES

OF THE

Average Relative Values of Gold and U. S. Paper Currency in the New York Market from the Suspension to the Resumption of Specie Payments, during the Peri 1878, both inclusive—Prepared by the U. S. Treasury Department.

CURRENCY VALUE OF GOLD.

Table showing the Average Value in Currency of One Hundred Dollars in Gold in the New York Market, by Months, Quarter years, Half-years, Calendar uary 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868	1869.	1870.	1871.	1872.	1873.	1874.
January	102.5	145.1	155.5	216.2	140.1	134.6	138.5	135.6	121.3	110.7	109.1	112.7	111.4
February	103.5	160.5	158.6	205.5	138.4	137.4	141.4	134.4	119.5	111.5	110.3	114.1	112.3
March	101.8	154.5	162.9	173.8	130.5	135.	139.5	131.3	112.6	111.	110.1	115.5	112.1
April	101.5	151.5	172.7	148.5	127.5	135.6	138.7	132.9	113.1	110.6	111.1	117.8	113.4
May	103.3	148.9	176.3	135.6	131.8	137.	139.6	139.2	114.7	111.5	113.7	117.7	112.4
June	106 5	144.5	210.7	140.1	148.7	137.5	140.1	138.1	112.9	112.4	113.9	116.5	111.5
July	115.5	130.6	258.1	142.1	151.6	139.4	142.7	136.1	116.8	112.4	114.3	115.7	110.
August	114.5	125.8	254.1	143.5	148.7	140.8	145.5	134.2	117.9	112.4	114.4	115.4	109.7
September	118.5	134.2	222.5	143.9	145.5	143.4	143.6	136.3	114.8	114.5	113.5	112.7	109.7
October	128.5	147.7	207.2	145.5	148.3	145.5	137.1	130.2	112.8	113.2	113.2	108.9	110.
November	131.1	148.	233.5	147.	143.8	139.6	134.4	126.2	111.4	111.2	112.9	108.6	110.9
December	132.5	151.1	227.5	146.2	136.7	134.8	135.2	121.5	110.7	109.5	112.2	110.	111.7
First quarter-year	102.6	153.4	159.	198.5	136.3	135.7	139.8	133.8	117.8	111.1	109.8	114.1	111.9
Second quarter-year	103.8	148.3	186.6	141.4	135.9	136.7	139.5	136.7	115.6	111.5	112.9	117.3	112.4
Third quarter year	116.2	130.2	244.9	143.2	148.6	141.2	143.9	135.7	116.5	113.1	114.1	114.6	109.8
Fourth quarter-year	130.6	148.9	222.7	146.2	142.9	139.3	135.6	126.	111.6	111.2	112.8	109.2	110.9
First half-year	103.2	150.8	172.8	169.9	136.1	136.2	139.6	135.3	115.7	111.3	111.4	115.7	112.2
Second half-year	123.4	139.6	233.8	144.7	145.8	140.3	139.8	130.8	114.	121.1	113.4	111.9	110.3
Calendar year	113.3	145.2	203.3	157.3	140.9	138.2	139.7	133.	114.9	111.7	112.4	113.8	111.2
Fiscal year ended June 30th		137.1	156.2	201.9	140.4	141.	139.9	137.5	123.3	112.7	111.8	114.6	112.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Defendant's Exhibit E-3

DEFENDANT'S ALTERNATIVE METHOD OF DETERMINING

RDINARY EXPENSES OF THE GOVERN MENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA AT JUNE 20TH, 1863.

COPY OF A STATEMENT FURNISHED BY THE TREASURY DEPARTMENT OF THE UNITED STATES

OF THE

nd U. S. Paper Currency in the New York Market from the Suspension to the Resumption of Specie Payments, during the Period of Seventeen Years from 1862 to 1878, both inclusive—Prepared by the U. S. Treasury Department.

CURRENCY VALUE OF GOLD.

e in Currency of One Hundred Dollars in Gold in the New York Market, by Months, Quarter years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

1862.	1863.	1864.	1865.	1866.	1867.	1868	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
102.5	145.1	155.5	216.2	140.1	134.6	138.5	135.6	121.3	110.7	109.1	112.7	111.4	112.5	112.8	106.3	102.1
103.5	160.5	158.6	205.5	138.4	137.4	141.4	134.4	119.5	111.5	110.5	114.1	112.3	114.5	113.4	105.4	102.
101.8	154.5	162.9	173.8	130.5	135.	139.5	131.3	112.6	111.	110.1	115.5	112.1	115.5	114.3	104.8	101.2
101.5	151.5	172.7	148.5	127.5	135.6	138.7	132.9	113.1	110.6	111.1	117.8	113.4	114.8	113.	106.2	100.6
103.3	148.9	176.3	135.6	131.8	137.	139.6	139.2	114.7	111.5	113.7	117.7	112.4	115.8	112.6	106.9	100.7
106 5	144.5	210.7	140.1	148.7	137.5	140.1	138.1	112.9	112.4	113.9	116.5	111.5	117.	112.5	105.4	100.8
115.5	130.6	258.1	142.1	151.6	139.4	142.7	136.1	116.8	112.4	114.3	115.7	110.	114.8	111.9	105.4	100.5
114.5	125.8	254.1	143.5	148.7	140.8	145.5	134.2	117.9	112.4	114.4	115.4	109.7	113.5	111.2	105.	100.6
118.5	134.2	222.5	143.9	145.5	143.4	143.6	136.3	114.8	114.5	113.5	112.7	109.7	115.8	110.	103.3	100.4
128.5	147.7	207.2	145.5	148.3	145.5	137.1	130.2	112.8	113.2	113.2	108.9	110.	116.4	109.7	102.8	100.6
131.1	148.	233.5	147.	143.8	139.6	134.4	126.2	111.4	111.2	112.9	108.6	110.9	114.7	109.1	102.8	100.2
132.3	151.1	227.5	146.2	136.7	134.8	135.2	121.5	110.7	109.5	112.2	110.	111.7	113.9	107.9	102.8	100.1
102.6	153.4	159.	198.5	136.3	135.7	139.8	133.8	117.8	111.1	109.8	114.1	111.9	114.2	113.5	105.5	101.7
103.8	148.3	186.6	141.4	135.9	136.7	139.5	136.7	113.6	111.5	112.9	117.3	112.4	115.9	112.7	106.2	100.7
116.2	130.2	244.9	143.2	148.6	141.2	143.9	135.7	116.5	113.1	114.1	114.6	109.8	114.7	111.	104.6	100.5
130.6	148.9	222.7	146.2	142.9	139.3	135.6	126.	111.6	111.2	112.8	109.2	110.9	115.	108.9	102.8	100.3
103.2	150.8	172.8	169.9	136.1	136.2	139.6	135.3	115.7	111.3	111.4	115.7	112.2	115.1	113.1	105.9	101.2
123.4	139.6	233.8	144.7	145.8	140.3	139.8	130.8	114.	121.1	113.4	111.9	110.3	114.8	109.9	105.7	100.4
113.3	145.2	203.3	157.3	140.9	138.2	139.7	133.	114.9	111.7	112.4	113.8	111.2	114.9	111.5	104.8	100.8
.....	137.1	156.2	201.9	140.4	141.	139.9	157.5	123.3	112.7	111.8	114.6	112.	112.7	113.9	107.9	102.5

GOLD VALUE OF CURRENCY.

Table showing the Average Value in Gold of One Hundred Dollars in Currency in the New York Market, by Months, Quarter-years, Half-years, Calendar Years, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868.	1869.	1870.	1871.	1872.	1873.	1874.
January	97.6	68.9	64.3	46.3	71.4	74.3	72.2	73.7	82.4	90.5	91.7	88.7	89.7
February	96.6	62.3	63.1	48.7	72.3	72.8	70.7	74.4	83.7	89.7	90.7	87.6	89.1
March	98.2	64.7	61.4	57.5	76.6	74.1	71.7	76.2	88.8	90.1	90.8	86.6	89.2
April	98.5	66.	57.9	67.3	78.6	73.7	72.1	75.2	88.4	90.4	90.	84.9	88.2
May	96.8	67.2	56.7	73.7	75.9	75.	71.6	71.8	87.2	89.7	88.	85.	89.9
June	93.9	69.2	47.5	71.4	67.2	72.7	71.4	72.4	88.6	89.	87.8	85.8	90.
July	86.6	76.6	38.7	70.4	66.	71.7	70.1	73.5	85.6	89.	87.5	86.4	91.
August	87.3	79.5	39.4	69.7	67.2	71.	68.7	74.5	84.8	89.	87.4	86.7	91.2
September	84.4	74.5	44.9	69.5	68.7	69.7	69.6	73.1	87.1	87.3	88.1	88.7	91.2
October	77.8	67.7	48.3	68.7	67.4	69.7	72.9	76.8	88.7	88.3	88.3	91.8	91.
November	76.3	67.6	42.8	68.	69.5	71.6	74.4	79.2	89.8	89.9	88.6	92.1	90.2
December	75.6	66.2	44.	68.4	73.2	74.2	74.	82.5	90.3	91.5	89.1	90.9	89.6
First quarter-year	97.5	65.2	62.9	50.4	73.3	73.7	71.5	74.7	84.9	90.	91.	87.6	89.3
Second quarter-year	96.3	67.4	53.6	70.7	73.6	73.2	71.7	75.2	88.	89.7	88.6	85.3	89.
Third quarter-year	86.1	76.8	40.8	69.8	67.2	70.8	69.5	73.7	85.8	88.4	87.6	87.3	91.1
Fourth quarter-year	76.6	67.2	44.9	68.4	70.	71.8	73.7	79.4	89.6	90.	88.7	91.6	90.2
First half-year	96.9	66.3	57.9	58.9	73.5	73.4	71.6	73.9	86.4	89.8	89.8	86.4	89.2
Second half year	81.	71.6	42.8	69.1	68.6	71.3	71.5	76.5	87.7	89.2	88.2	89.4	90.7
Calendar year	88.3	68.9	49.2	63.6	71.	72.4	71.6	75.2	87.	89.5	89.	87.9	89.9
Fiscal year ended June 30th	....	72.9	64.	49.5	71.2	70.9	71.5	72.7	81.1	88.7	89.4	87.5	89.3

GOLD VALUE OF CURRENCY.

ld of One Hundred Dollars in Currency in the New York Market, by Months, Quarter-years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

	1863.	1864.	1865.	1866.	1867.	1868.	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
	68.9	64.3	46.3	71.4	74.3	72.2	73.7	82.4	90.5	91.7	88.7	89.7	88.9	88.6	94.	97.9
	62.3	63.1	48.7	72.3	72.8	70.7	74.4	83.7	89.7	90.7	87.6	89.1	87.3	88.2	94.8	98.
	64.7	61.4	57.5	76.6	74.1	71.7	76.2	88.8	90.1	90.8	86.6	89.2	86.6	87.5	91.4	98.8
	66.	57.9	67.3	78.6	73.7	72.1	75.2	88.4	90.4	90.	84.9	88.2	87.1	88.5	94.2	99.4
	67.2	56.7	73.7	75.9	75.	71.6	71.8	87.2	89.7	88.	85.	89.9	86.3	88.8	83.5	99.5
	69.2	47.5	71.4	67.2	72.7	71.4	72.4	88.6	89.	87.8	85.8	90.	85.4	88.9	94.9	99.2
	76.6	38.7	70.4	66.	71.7	70.1	73.5	85.6	89.	87.5	86.4	91.	87.2	89.4	94.8	99.5
	79.5	39.4	69.7	67.2	71.	68.7	74.5	84.8	89.	87.4	86.7	91.2	88.1	89.9	95.2	99.5
	74.5	44.9	69.5	68.7	69.7	69.6	73.1	87.1	87.3	88.1	88.7	91.2	86.4	90.9	96.8	99.6
	67.7	48.3	68.7	67.4	69.7	72.9	76.8	88.7	88.3	88.3	91.8	91.	85.9	91.2	97.3	99.5
	67.6	42.8	68.	69.5	71.6	74.4	79.2	89.8	89.9	88.6	92.1	90.2	87.2	91.7	97.3	99.8
	66.2	44.	68.4	73.2	74.2	74.	82.5	90.3	91.5	89.1	90.9	89.6	87.8	92.6	97.5	99.9
	65.2	62.9	50.4	73.3	73.7	71.5	74.7	84.9	90.	91.	87.6	89.3	87.6	88.1	94.8	98.3
	67.4	53.6	70.7	73.6	73.2	71.7	75.2	88.	89.7	88.6	85.3	89.	86.3	88.7	94.2	99.3
	76.8	40.8	69.8	67.2	70.8	69.5	73.7	85.8	88.4	87.6	87.3	91.1	87.2	90.1	95.6	99.5
	67.2	44.9	68.4	70.	71.8	73.7	79.4	89.6	90.	88.7	91.6	90.2	86.9	91.8	97.3	99.7
	66.3	57.9	58.9	73.5	73.4	71.6	73.9	86.4	89.8	89.8	86.4	89.2	86.9	88.4	94.4	98.8
	71.6	42.8	69.1	68.6	71.3	71.5	76.5	87.7	89.2	88.2	89.4	90.7	87.1	90.9	96.4	99.6
	68.9	49.2	63.6	71.	72.4	71.6	75.2	87.	89.5	89.	87.9	89.9	87.	89.8	95.4	99.2
	72.9	64.	49.5	71.2	70.9	71.5	72.7	81.1	88.7	89.4	87.5	89.3	88.8	87.8	92.7	97.6

Defendant's Alternative Method of Determining

Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia.

At June 20th, 1863.

VIRGINIA.			WEST VIRGINIA.		
Valuation of Real Property at latest obtainable assessment, as per agreed summary	$296,085,460.31		Total valuation of Real Property, at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas	$29,546,249.20	
tiff claims that a fair estimated valuation 50% of this assessed valuation		$148,042,730.15			
valuation of Personal Property, including slaves but excluding Income at latest ainable assessment, as per agreed summary	403,696,228.59				
tiff claims that a fair estimated valuation 25% of this assessed valuation		100,924,057.15			
Total		$248,966,787.30	Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60
SUMMARY.			Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
tiff claims the fair estimated valuation Property, Real and Personal, in Virginia, noted above, to be	248,966,787.30	79.2765%	Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97
dant claims the valuation of Property, l and Personal, in West Virginia, estiated on the basis, and according to the inciple, adopted by the Plaintiff, to be per contra	65,081,874.01	20.7235%	Total as per agreed summary	$82,449,252.04	
Total	$314,048,661.31	100 %			
dant further claims that the Ordinary penses of Government from March 19th 62, to December 31st, 1860, amount to	$ 12,207,684.29		Total fair estimated valuation of Real Property, as noted above		$51,382,002.57
shown in Joint Exhibit D-1 and that e amount to be charged to West Virginia, mputed on the principle adopted by the intiff, is 20.7235%, as above		$ 3,773,269.45	Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
			Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
			Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69
			Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties	1,805,796.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00
			Total as per agreed summary	$30,394,487.21	
			Total fair estimated valuation		

ified Correct as to amounts and calculations.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXON,

For the Defendant.

ntiff agrees that the above figures are cort and that all calculations are correctly ade but objects to the total assessment of al and Personal Property being reduced to .2% and to the use of this amount as a AIR ESTIMATE of the valuation; objects Slaves being considered Personal Propty; objects to the use of percentages so tained and objects to the amount of Ordiry Expenses Defendant uses in determinthe proportion chargeable to West Vir-

VIRGINIA.

Valuation of Real Property at latest obtainable assessment, as per agreed summary	$296,085,460.31	
...tiff claims that a fair estimated valuation ...50% of this assessed valuation		$148,042,730.15
...valuation of Personal Property, including slaves but excluding Income at latest ...ainable assessment, as per agreed summary	403,696,228.59	
...tiff claims that a fair estimated valuation ...25% of this assessed valuation		100,924,057.15
Total		$248,966,787.30

SUMMARY.

...tiff claims the fair estimated valuation ...Property, Real and Personal, in Virginia, ...noted above, to be	248,966,787.30	79.2765%
...dant claims the valuation of Property, ...l and Personal, in West Virginia, estimated on the basis, and according to the ...inciple, adopted by the Plaintiff, to be ...per contra	65,081,874.01	20.7235%
Total	$314,048,661.31	100 %
...dant further claims that the Ordinary ...penses of Government from March 19th ...3, to December 31st, 1860, amount to	$ 18,207,684.29	
...shown in Joint Exhibit D-1 and that ...amount to be charged to West Virginia, ...mputed on the principle adopted by the ...intiff, is 20.7235%, as above		$ 3,773,269.45

...ified Correct as to amounts and calculations.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,

For the Defendant.

...tiff agrees that the above figures are correct and that all calculations are correctly ...de but objects to the total assessment of ...l and Personal Property being reduced to ...% and to the use of this amount as a ...IR ESTIMATE of the valuation; objects ...Slaves being considered Personal Property; objects to the use of percentages so ...ained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

...ied Correct as to figures and Calculations.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,

For the Plaintiff.

Total valuation of Real Property, at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas	$29,546,249.20		
Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97	
Total as per agreed summary	$82,449,252.04		
Total fair estimated valuation of Real Property, as noted above			$51,382.002.57
Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00		
Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69	
Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties	1,805,796.00		
Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00	
Total as per agreed summary	$30,394,487.21		
Total fair estimated valuation of Personal Property, including Slaves, but excluding income as noted above			13,699,871.44
Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis and according to the principle adopted by the Plaintiff, to be			$65,081,874.01

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT F-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

JOINT EXHIBIT P-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT F-1.

All Moneys Paid into the Treasury of the Commonwealth from the Counties Included Within the State of West Virginia from March 19th, 1863, to December 31st, 1860, Inclusive.

PARAGRAPH VI OF DECREE.

		Amounts agreed upon by Plaintiff and Defendant as credits to West Virginia.	Items claimed by Defendant, agreed to as to amounts, but not admitted by Plaintiff to be credits to West Virginia.
1	Bonus received from Banks in West Virginia Counties		$ 96,253.62
2	Clerks of County and Corporation Courts	$ 161,223.06	
3	Clerks of Superior Courts	96,850.51	
4	Clerks of District Courts	769.28	
5	Clerks of Superior Courts of Chancery	2,797.59	
6	Costs—Civil and Criminal Prosecutions	1,926.36	
7	Dividends from Banks in West Virginia Counties		786,666.98
8	Dividends and Interest from Turnpike Companies in West Virginia Counties		13,595.48
9	Dividends from Bridge Companies in West Virginia Counties		6,028.51
10	Dividends from Interstate Turnpike Companies (Proportion)		1,355.92
11	Dividends from James River & Kanawha Company (Proportion)		352.21
12	Escheats	4,603.57	
13	Fines, Forfeitures and Penalties	57,911.76	
14	Interest from City of Wheeling		571.81
15	Land—Sale of Unappropriated	109,103.64	
16	Land—Redemption of	58,944.10	
17	Land—Sale of Delinquent and Forfeited	17,694.73	
18	Land—Redemption of and Sale of Delinquent and Forfeited	48,699.36	
19	Militia Fines	73,926.39	
20	Merchants and Mechanics Bank Stock sold (Bonus Stock)		43,103.35
21	Northwestern Bank—Profit on 1,082 shares sold		5,471.42
22	Northwestern Turnpike Road—Tolls		126,339.89
23	Staunton & Parkersburg Road—Tolls		17,080.71
24	Taxes—General Revenue	5,037,421.46	
25	Taxes—Capitation	123,111.10	
26	Tax on Free Negroes	4,079.52	
27	Tax on Dividends	53,202.60	
28	Tax on Railroad Travel	49,202.01	
29	Tax on Notarial Seals	48,247.02	
30	Voluntary Enslavement	47.50	
31	Miscellaneous — Unclassified Receipts	4,604.16	
	Total	**$5,954,395.66**	**$1,096,819.90**

F-1
P-2

SUMMARY.

Total claimed by Defendant	$7,051,215.56
Total admitted by Plaintiff	5,954,395.66
Total not admitted by Plaintiff	$1,096,819.90

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT G-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT C-1

Prepared by

PEIRCE, WATERHOUSE & CONFANT
Chartered Accountants
56 William Street, New York
For the Plaintiff

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT G-1.

All Money, Property, Stocks and Credits which West Virginia Received from the Commonwealth of Virginia.

PARAGRAPH VII OF DECREE.

A. Money.

From
"LEDGER 1863
TREASURER
WEST VA."

Folio 4, July 2nd, 1863	Received from "Treasury of Virginia by Campbell Tarr" and deposited in the Merchants & Mechanics Bank at Wheeling	$ 92,866.17
Folio 36, July 2nd, 1863	Received from "The Treasurer of Virginia" and deposited in the North-Western Bank at Wheeling	47,734.03
Folio 56, July 9th, 1863	Received from "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wellsburg	9,399.80
		$150,000.00
Folio 100, Feb. 1st, 1864	Received from the "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wheeling	20,771.46
		$170,771.46

B. Property .....
C. Stocks .....
D. Credits .....

The Books of West Virginia, except the Treasurer's Ledger above referred to, not being obtainable, we are unable to ascertain what other property, if any, was taken over by West Virginia.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant certifies to the correctness of the figures shown by the plaintiff in this exhibit, but denies that the total amount, or any part thereof, is a proper charge against West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

MONEY, PROPERTY, STOCKS AND CREDITS
RECEIVED BY WEST VIRGINIA.

DEFENDANT'S EXHIBIT G-1.

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

DEFENDANT'S EXHIBIT G-1.

MMARY OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VI
CEDING EXHIBIT, BUT NOT INCLUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE
OF THE RESTORED GOVERNMENT OF VIRGINIA;

OGETHER WITH THE NATURE AND DESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WE
BY THE COMMONWEALTH IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SA
PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

**NOTE:—In the following statements and schedules, no value is shown as chargeable to West Virginia except in the cases of the Fairmont Bank in Marion County and the Northwestern Ba
at no evidence has been produced to determine the value of the stock of any of the said companies other than the two above mentioned.**

	Total amount paid by Virginia.	Dividends.	Va charg to W Virgi
Total, turnpikes and roads lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock	$ 700,103.49	$ 12,600.54	
Total, navigation companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	210,500.00		
Total, bridge companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	78,412.50	6,028.51	
Total, turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia, in which the Commonwealth held stock,	154,652.84	1,901.27	
Northwestern Bank of Virginia (at Wheeling)	341,800.00	534,815.16	$341,8
Fairmont Bank, (Marion County),	50,000.00	2,000.00	50,0
James River and Kanawha Company,	9,547,582.21	10,092.00	
Total,	$11,083,051.04		

DEFENDANT'S EXHIBIT G-1.

'E OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY PRE-
LUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA;

)ESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WEST VIRGINIA; AND THE AMOUNT PAID
I IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SAID COMPANIES AND BANKS PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

schedules, no value is shown as chargeable to West Virginia except in the cases of the Fairmont Bank in Marion County and the Northwestern Bank of Virginia at Wheeling, for the reason mine the value of the stock of any of the said companies other than the two above mentioned.

	Total amount paid by Virginia.	Dividends.	Value chargeable to West Virginia.
, turnpikes and roads lying wholly within the territory now constituting the State of West Virginia, which the Commonwealth of Virginia held stock	$ 700,103.49	$ 12,600.54	
, navigation companies lying wholly within the territory now constituting the State of West Virginia, in ich the Commonwealth of Virginia held stock,	210,500.00		
, bridge companies lying wholly within the territory now constituting the State of West Virginia, in ich the Commonwealth of Virginia held stock,	78,412.50	6,028.51	
, turnpikes and roads extending into and between the territory now constituting the Commonwealth of rginia and the State of West Virginia, in which the Commonwealth held stock,	154,652.84	1,901.27	
hwestern Bank of Virginia (at Wheeling)	341,800.00	534.815.16	$341,800.00
nont Bank, (Marion County),	50,000.00	2,000.00	50,000.00
s River and Kanawha Company,	9,547,582.21	10,092.00	
tal,	$11,083,051.04		

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEAL

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	D
Brandonville, Kingwood and Evansville Road,	March 13, 1837	$ 45,000.00	$ 25.00	$ 8,000.00	$ 3,193.46	
Buckhannon and Little Kanawha Turnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00	
Charleston and Point Pleasant Turnpike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00	
Charleston, Ripley and Ravenswood Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41	
Cacapon and North Branch Turnpike Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00	
Clarksburg and Buchanan Turnpike Company,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13	
Cranberry Summit and Brandonville Turnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11	
Clarksburg and Philippi Turnpike Company,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25	
Clarksburg and Wheeling Turnpike Company,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35	
Clear Fork Road Company,	March 27, 1858	5,000.00	25.00	3,000.00	600.00	
Dunkard Creek Turnpike Company,	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00	
East River and Princeton Turnpike Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00	
Fish Creek Road Company,	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00	
Franklin and Circleville Turnpike Company,	" 10, 1853	4,000.00	25.00	2,400.00	2,175.00	
Gilmer, Ripley and Ohio Turnpike Company,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80	
Gnatty Creek and West Union Turnpike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55	
Gilmer and Braxton Turnpike Company,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80	
Grave Creek and Pennsylvania Line Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	

UNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

and roads, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
e Road,	March 13, 1837	$ 45,000.00	$ 25.00	$ 8,000.00	$ 3,193.46			
rnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00			
ike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00			
Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41			
Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00			
mpany,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13			
rnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11			
pany,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25			
mpany,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35			
	March 27, 1858	5,000.00	25.00	3,000.00	600.00			
	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00			
Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00			
	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00			
mpany,	" 10, 1853	4,000.00	25.00	2,400.00	2,175.00			
mpany,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80			
ike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55			
y,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80			
Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	1860	$ 412.50	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.
Holliday's Cove Turnpike Company,	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33
Holliday's Cove and Wellsburg Turnpike Company,	April 5, 1858	Included in above.	25.00	Included in above.	5,916.67
Hampshire and Morgan Turnpike Company,	March 15, 1849	11,000.00	25.00	6,600.00	6,510.00
Harrisville Turnpike Company,	" 28, 1848	13,500.00	50.00	8,100.00	6,000.00
Hedgesville and Potomac Turnpike Company,	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00
Hardy and Randolph Turnpike Company,	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78
Holliday's Cove and New Cumberland Turnpike Company,	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00
Kingwood and West Union Turnpike Company,	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48
Lewisburg and Blue Sulphur Springs Turnpike Company,	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00
Leading Creek and Buffalo Creek Turnpike Company,	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84
Letart Falls and West Columbia Turnpike Company,	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00
Logan, Raleigh and Monroe Turnpike Company,	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24
Marshall and Ohio Turnpike Company,	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75
Martinsburg and Potomac Turnpike Company,	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00
Middleway and Gerardstown Turnpike Company,	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75
Morgantown and Bridgeport Turnpike Company,	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40
Moorfield and Alleghany Turnpike Company,	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78
Moorfield and North Branch Turnpike Company,	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75

NT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held Stock

nd roads, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value Chargeable to West Virginia.
						1848	$ 69.60	
						1849	35.50	
						1850	47.20	
						1851	83.00	
						1852	94.66	
						1853	59.26	
.....	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33	1854	71.00	
						1856	23.66	
						1857	88.75	
						1858	66.27	
						1859	20.69	
						1860	55.91	
						Total,	$ 715.50	
ke Company, ...	April 5, 1858	Included in above.	25.00	Included in above.	5,916.67			
pany, ...	March 15, 1849	11,000.00	25.00	6,600.00	6,510.00			
.....	" 28, 1848	13,500.00	50.00	8,100.00	6,000.00			
mpany, ...	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00			
y, ...	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78			
Turnpike Company, ...	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00			
mpany, ...	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48			
Turnpike Company, ...	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00			
pike Company, ...	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84			
ke Company, ...	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00			
Company, ...	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24			
.....	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75			
						1853	$ 146.00	
mpany, ...	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00	1854	306.00	
						1859	459.00	
						1860	765.00	
						Total,	$1,676.00	
Company, ...	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75			
Company, ...	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40			
ny, ...	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78			
Company, ...	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEAL

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dat
Newark Turnpike Company,	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00	
North River Turnpike Company,	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00	
New Manchester Turnpike Company,	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00	
New Creek and Hardy Turnpike Company,	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1
Patterson's Creek Valley Turnpike Company,	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00	
Parkersburg and Elizabethtown Turnpike Company,	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00	
Pleasant Valley and Tunnelton Turnpike Company,	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45	
Potomac Turnpike Company,	" 4, 1851	4,500.00	20.00	2,700.00	2,489.70	
Red and Blue Sulphur Springs Turnpike Company,	January 18, 1836	22,000.00	50.00	10,200.00	8,856.66	
Ravenswood and Reedy Creek Turnpike Company,	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99	
Ritchie and Gilmer Turnpike Company,	March 12, 1851	15,000.00	25.00	9,000.00	8,891.18	
Reedy and Harrisville Turnpike Company,	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87	
Raleigh and Boone Graded Road Company,	January 28, 1854	5,000.00	25.00	3,000.00	1,800.00	
Smithfield, Charlestown and Harper's Ferry Turnpike Company,	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00	
Salem and Harrisville Turnpike Company,	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92	
Sheperdstown and Smithfield Turnpike Company,	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1 1 1 1 1 1 1 1
						To
Sistersville and Salem Turnpike Company,	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00	
Shinston Turnpike Company,	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26	
Sandy River Turnpike Company,	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00	
Sweet and Salt Sulphur Springs Turnpike Company,	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1 1 1 1 1
						To

T AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

ernal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

roads, January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
.....	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00			
.....	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00			
.....	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00			
, ...	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1857	$ 271.25	
by, ...	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00			
Company, ...	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00			
Company, ...	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45			
.....	" 4, 1851	4,500.00	20.00	2,700.00	2,489.70			
Company, ...	January 18, 1836	22,000.00	50.00	10,200.00	8,856.66			
mpany, ...	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99			
.....	March 12, 1851	15,000.00	25.00	9,000.00	8,891.18			
, ...	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87			
.....	January 28, 1854	5,000.00	25.00	3,000.00	1,800.00			
y Turnpike Company, ...	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00			
.....	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92			
						1832	$ 399.38	
						1833	309.64	
						1834	354.82	
mpany, ...	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1835	269.37	
						1836	126.00	
						1837	98.00	
						1838	58.20	
						1839	40.00	
						Total,	$1,655.41	
.....	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00			
.....	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26			
.....	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00			
						1855	$ 400.12	
						1856	654.75	
Company, ...	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1857	582.00	
						1858	363.75	
						1859	459.00	
						Total,	$2,459.62	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONW

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.
St. Mary's Turnpike Company,	February 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00
Weston and Gauley Bridge Turnpike Company,	March 25, 1848	90,000.00	25.00	66,000.00	64,098.31
Weston and West Union Turnpike Company,	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21
Weston and Fairmont Turnpike Company,	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50
Wheeling, West Liberty and Bethany Turnpike Company,	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00
White and Salt Sulphur Springs Turnpike Company,	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00
Wellsburg and Bethany Turnpike Company,	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22
Wellsburg and Washington Turnpike Company,	January 18, 1808	17,833.33	50.00	7,133.33	7,071.01
Williamsport Turnpike Company,	March 15, 1849	10,000.00	25.00	6,000.00	5,130.65
West Milford and New Salem Turnpike Company,	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32
West Union Turnpike Company,	February 24, 1851	12,000.00	25.00	7,200.00	3,054.00
Walnut Gap Road Company,	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37
Total, Turnpikes and Roads,		$1,407,618.33		$847,163.33	$700,103.49

NT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

nterral Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

nd Roads, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
.....	February 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00			
Company, ...	March 25, 1848	90,000.00	25.00	66,000.00	64,098.31			
mpany, ...	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21			
pany, ...	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50			
Turnpike Company, ...	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00			
						1838	$ 140.00	
						1839	280.00	
						1840	340.00	
						1841	320.00	
						1842	160.00	
						1844	220.00	
						1845	140.00	
						1846	200.00	
						1847	200.00	
						1848	240.00	
ke Company, ...	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00	1849	220.00	
						1850	220.00	
						1851	300.00	
						1852	300.00	
						1853	240.00	
						1854	260.00	
						1856	160.00	
						1857	240.00	
						1858	260.00	
						1859	180.00	
						1860	400.00	
						Total,	$5,020.00	
mpary, ...	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22			
Company, ...	January 18, 1808	17,833.33	50.00	7,133.33	7,071.01	1837	$ 178.13	
						1838	212.13	
						Total,	$ 390.26	
.....	March 15, 1849	10,000.00	25.00	6,000.00	5,130.65			
Company, ...	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32			
.....	February 24, 1851	12,000.00	25.00	7,200.00	3,054.00			
.....	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37			
.....		$1,407,618.33		$847,163.33	$700,103.49		$12,600.54	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEAL

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.
Coal River Navigation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00
Guyandotte Navigation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00
Monongalia Navigation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00
Tug Fork Navigation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00
Total, Navigation Companies,		$460,000.00		$239,000.00	$210,500.00
Bridge companies, From March 19, 1823, to January 1, 1861.					
Buckhannon Bridge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00
Cheat River Toll Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50
Elk River Bridge Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00
Fairmont and Palatine Bridge Company,	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00
Guyandotte Bridge Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00
Morgantown Bridge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00
North Branch Bridge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00
South Branch Bridge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00
Virginia and Maryland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00
Total, Bridge Companies,		$181,000.00		$79,800.00	$ 78,412.50

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.
Coal River Navigation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00
Guyandotte Navigation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00
Monongalia Navigation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00
Tug Fork Navigation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00
Total, Navigation Companies,		$460,000.00		$239,000.00	$210,500.00
Bridge companies, From March 19, 1823, to January 1, 1861.					
Buckhannon Bridge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00
Cheat River Toll Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50
Elk River Bridge Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00
Fairmont and Palatine Bridge Company,	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00
Guyandotte Bridge Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00
Morgantown Bridge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00
North Branch Bridge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00
South Branch Bridge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00
Virginia and Maryland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00
Total, Bridge Companies,		$181,000.00		$79,800.00	$ 78,412.50

NT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

ternal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

ompanies, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
.....	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00			
.....	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00			
.....	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00			
.....	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00			
.....		$460,000.00		$239,000.00	$210,500.00			
panies, to January 1, 1861.								
.....	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00			
.....	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50	1853	$ 374.00	
						1854	166.51	
						Total,	$ 540.51	
.....	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00	1857	$ 420.00	
						1858	210.00	
						1859	210.00	
						1860	320.00	
						Total,	$1,160.00	
.....	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00			
.....	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00			
.....	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00			
.....	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00			
.....	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00	1860	$ 378.00	
						1852	$ 600.00	
						1853	600.00	
						1854	250.00	
						1855	300.00	
						1856	600.00	
.....	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00	1857	200.00	
						1858	550.00	
						1859	450.00	
						1860	400.00	
						Total,	$3,950.00	
.....		$181,000.00		$79,800.00	$ 78,412.50		$6,028.51	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALT

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undiv

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Da
Berkeley and Hampshire Turnpike Company, ... From Martinsburg, Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County, to some point on Northwestern road at or near French's Tavern in same County. Road estimated to be 49¾ miles in length, 3¾ miles of which run through Frederick County, Va., making 92.46% in West Virginia and 7.54% in Virginia.	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00	
Cross Roads and Summit Point Turnpike Company, ... From a point of intersection on the Charlestown and Berryville Turnpike at the cross road leading to Summit Point, to Summit Point depot, on the Winchester and Potomac railroad, in Jefferson County. The length of this road was reported as 5 miles, 690 yds. or 5.39 miles, of which 2½ miles, or 46.38% are estimated to be in Jefferson County, West Virginia.	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00	
Giles, Fayette and Kanawha Turnpike Company, ... From Fauer's Furnace, (above Kanawha Salt Works) by Falls of Kanawha and Vandal's in the Loop, to Giles Court House. The total length of this road was reported in 1841 as 134 miles, 17.5 chains, from which is deducted 7 miles, 54.8 chains which run over the Fincastle and Cumberland Gap Road, leaving 126 miles, 42.7 chains constructed by the Giles, Fayette and Kanawha Company, practically 126½ miles. Of this number of miles, 3 miles are estimated to be in Giles County, Va., (allowing for change in boundary) making West Virginia's proportion 97.62%. The reports of this company show total capital stock of $76,850.00 paid and unpaid, which is apparently $6,850.00 more than authorized.	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60	
Huntersville and Warm Springs Turnpike Company,..... From the Warm Springs in Bath County, to Huntersville in Pocahontas County. The length of this road was reported in 1834 as 26¼ miles. The first half mile ran over a turnpike already built which left 25¾ miles to be built. This is notwithstanding the fact that the distance by direct line was only 16½ miles. 5½ miles, or 21.36% is estimated as West Virginia's proportion. The road was destroyed in 1842 and 1843. In 1860 a new company was formed to which the State subscribed, but nothing was paid.	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24	

NT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

ad roads, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
pany, ... by way of Boyd's Gap and to some point on Northwest- in same County. ength, 3¾ miles of which run g 92.46% in West Virginia and	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00			
e Company, ... arlestown and Berryville Turn- ummit Point, to Summit Point c railroad, in Jefferson County. 5 miles, 690 yds. or 5.39 miles, estimated to be in Jefferson	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00			
ompany, ... wha Salt Works) by Falls of to Giles Court House. rted in 1841 as 134 miles, 17.5 les, 54.8 chains which run over Road, leaving 126 miles, 42.7 ayette and Kanawha Company, ber of miles, 3 miles are esti- owing for change in boundary) 7.62%. tal capital stock of $76,850.00 y $6,850.00 more than author-	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60			
ke Company,..... nty, to Huntersville in Poca-	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24			
1834 as 26¼ miles. The first y built which left 25¾ miles g the fact that the distance 5½ miles, or 21.36% is esti- . The road was destroyed in any was formed to which the d.								

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEA

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undiv

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.
Hardy and Winchester Turnpike Company, ... From Moorfield by way of Wardensville to within four miles of Winchester, with branch to Capon Springs. From reports this road, including the branch, is ascertained to be 61 miles in length, 41 miles of which, or 67.21% are estimated to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00
Hillsborough and Harper's Ferry Turnpike Company, ... From Hillsborough, Loudoun County, to some point near the bridge across the Shenandoah river at Harper's Ferry, Jefferson County. The length of this road is reported as 10½ miles, of which ¼ mile, or 2.38% is ascertained to be in West Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00
Martinsburg and Winchester Turnpike Company, ... From Martinsburg, Berkeley County, to Winchester, Frederick County. This road is ascertained to be 22 miles in length, of which 13 miles, or 59.09% are found to be in West Virginia. Letters on file show that as late as in 1874 there was $1,300.00 on deposit at Winchester to the credit of this company. This was after West Virginia had released her part of the road to the County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00
Morgan and Frederick Turnpike Company, ... From Potomac River, opposite Hancock, to the North Frederick Grade in Frederick County. From reports the road is ascertained to be about 30 miles in length, of which 22 miles, or 73⅓% are estimated to be in Morgan County, West Virginia.	February 25, 1851	15,000.00	20.00	9,000.00	8,005.00
Mountain Lake and Salt Sulphur Springs Turnpike Company, ... From Salt Sulphur Springs, Monroe County, by way of Mountain Lake, Giles County, to Christiansburg, Montgomery County. Length of road 48 miles, 8 miles, or 16⅔% of which is in Monroe County, West Virginia.	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00

T AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

ich Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

d roads, o January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
y, ... is to within four miles of Winings. From reports this road, to be 61 miles in length, 41 ed to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00			
s Company, ... o some point near the bridge er's Ferry, Jefferson County. 10½ miles, of which ¼ mile, t Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00	1856	$ 240.00	
Company, ... Winchester, Frederick County. s in length, of which 13 miles, Virginia. Letters on file show 0.00 on deposit at Winchester was after West Virginia had County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00	1859 1860 Total,	803.27 405.00 $1,208.27	
y, ... to the North Frederick Grade be about 30 miles in length, of ted to be in Morgan County,	February 25, 1851	15,000.00	20.00	9,000.00	8,005.00			
Turnpike Company, ... nty, by way of Mountain Lake, ntgomery County. Length of which is in Monroe County,	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dat
North Frederick Turnpike Company, ... From a point at or near the house of Frederick B. Jenkins in Hampshire County, through Gainesborough to Winchester. The road was reported as 19¼ miles in length of which we estimate, exact location not being clear, 2¼ miles, or 11.68%, to be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,325.00	11
Raleigh and Wythe Line Turnpike Company, ... That portion of the Raleigh and North Carolina turnpike lying between the Giles, Fayette and Kanawha turnpike in Raleigh County and the county line of Wythe and Tazewell counties. This road is estimated to be 60 miles in length, 44 miles of which, or 73⅓%, are estimated to be in West Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00	
Total, turnpikes and roads, ...		$289,550.00		$165,400.00	$154,652.84	

F AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC.,, Continued.

Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

roads, January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
..... derick B. Jenkins in Hampto Winchester. The road was ch we estimate, exact location o be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,325.00	1857	$ 453.00	
ay, ... Carolina turnpike lying be- turnpike in Raleigh County well counties. n length, 44 miles of which, Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00			
.....		$289,550.00		$165,400.00	$154,652.84		$1,901.27	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH

Banks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

(From March 19, 1823, to January 1, 1861.)

		Number of shares.	Par value of shares.
Northwestern Bank of Virginia, at Wheeling.			
Held by Commonwealth Fund,		2,918	$291,800.00
The Commonwealth Fund originally held 4,000 shares which were paid for as follows:			
Cash,	$375,091.33		
Net dividends and interest	24,908.67		
4,000 shares at $100.00 per share,	$400,000.00		
In 1857 the Commonwealth sold 1,082 shares for $113,671.42 and turned this amount over to the Sinking Fund.			
Held by Literary Fund,		500	$ 50,000.00
Purchased in 1832.			
Total, Northwestern Bank stock, January 1, 1861,		3,418	$341,800.00
Fairmont Bank, (Marion County)			
Held by Literary Fund,		1,000	$ 50,000.00
Purchased in 1860.			

AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

nks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

anuary 1, 1861.)	Number of shares.	Par value of shares.	Dividends received by Commonwealth. Date.	Amount.	Value chargeable to West Virginia.
Wheeling.					
.....	2,918	$291,800.00	Regularly 1838-1860 on 2,918 shares,.....	$445,315.16	
held 4,000 shares which were paid for as follows:					
..... $375,091.33					
..... 24,908.67					
..... $400,000.00					
s for $113,671.42 and turned this amount over to the Sinking Fund.					
.....	500	$ 50,000.00	Regularly 1835-1860 both inclusive except 1843,.....	$ 89,500.00	
1, 1861,.....	3,418	$341,800.00	Total,.....	$534,815.16	
.....	1,000	$ 50,000.00	1860.....	$ 2,000.00	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMON

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823

	Number of shares.	Par value of shares.	COST		
			Expended through the Commonwealth Fund.	Expended through the Internal Improvement Fund.	Expended through the Sinking Fund.
Expenditures by the Commonwealth, ... For construction work and improvements on the James River Canal, Blue Ridge Canal and Kanawha road and river which were turned over to the James River and Kanawha Company for 10,000 shares of capital stock of that company in accordance with act passed March 16, 1832. (P. 73.)	10,000	$1,000,000.00		$1,216,666.30	
Capital Stock of James River and Kanawha Company, ... Received in part payment of cost of Blue Ridge Canal Turnpike in accordance with act passed February 25, 1833, (P. 57). The balance of the cost of this turnpike, viz: $58.80, was paid to the State in cash by the James River and Kanawha Company.	92	9,200.00		9,200.00	
Expenditures by the Commonwealth, ... On account of subscriptions to capital stock.	19,908	1,990,800.00		1,990,800.00	
State bonds issued in accordance with the act passed March 23, 1860, .. (P. 113). In exchange for a similar amount of capital stock.	2,000	200,000.00		200,000.00	
	32,000	$3,200,000.00		$3,416,666.30	
Capital stock issued to the Commonwealth on account of the items below,	72,000	$7,200,000.00			
Expenditures on account of interest on guaranteed bonds and annuity to stockholders of the James River Company; deducting from the latter, the amount of the annuity repaid to the Commonwealth by the James River and Kanawha Company, ...			$695,542.66	$145,670.45	$181,202.80
Cash loans, ...				890,000.00	
Principal amount required to produce annually, at six per cent, the sum of $21,000.00, guaranteed forever to the stockholders of the James River Company, by the act of March 23, 1860, ...				350,000.00	
Cash loans to the Richmond Dock Company by the Board of Public Works, transferred to the Commonwealth Fund; being a part of the debt amounting to $94,128.96, so transferred, ...			12,500.00		
The said debt became a liability of the James River and Kanawha Company through its purchase of the Richmond Dock Company, and is as below:—					
Loan of Bank of Virginia stock, ... $ 37,590.00					
Cash, ... 12,500.00					
Total, ... $ 50,000.00					
Premium on the above stock, ... 4,078.12					
Total, ... $ 54,078.12					

T AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

tock Acquired and Owned by the Common wealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST				Dividend received by Commonwealth.	
			Expended through the Commonwealth Fund.	Expended through the Internal Improvement Fund.	Expended through the Sinking Fund.	Total cost.	Date	Amount.
.....	10,000	$1,000,000.00		$1,216,666.30		$1,216,666.30		
ts on the James River Canal, and river which were turned ha Company for 10,000 shares accordance with act passed							1836	$10,092.00
ha Company, ... Blue Ridge Canal Turnpike in 25, 1833, (P. 57). The balance 80, was paid to the State in ha Company.	92	9,200.00		9,200.00		9,200.00		
..... stock.	19,908	1,990,800.00		1,990,800.00		1,990,800.00		
act passed March 23, 1860, .. nt of capital stock.	2,000	200,000.00		200,000.00		200,000.00		
	32,000	$3,200,000.00		$3,416,666.30		$3,416,666.30		$10,092.00
on account of the items below, guaranteed bonds and annuity Company; deducting from the paid to the Commonwealth by pany, ...	72,000	$7,200,000.00	$695,542.66	$145,670.45	$181,202.80	$1,022,415.91		
.....				890,000.00		890,000.00		
annually, at six per cent, the er to the stockholders of the March 23, 1860, ...				350,000.00		350,000.00		
pany by the Board of Public ealth Fund; being a part of ransferred, ...			12,500.00			12,500.00		
of the James River and Ka- of the Richmond Dock Com-								
.....	$ 37,500.00							
.....	12,500.00							
....	$ 50,000.00							
.....	4,078.12							

Loan of Bank of Virginia stock,	$ 37,500.00
Cash,	12,500.00
Total,	$ 50,000.00
Premium on the above stock,	4,078.12
Total,	$ 54,078.12
Interest on $54,078.12,	33,714.69
Total amount of decree obtained by the Board of Public Works in February 1845,	$ 87,792.81
Interest on $87,792.81 to February 1845,	6,336.15
Total transferred to the Commonwealth Fund in exchange for a certificate of state stock for $100,000.00; the difference being paid in cash,	94,128.96

The total amount of $94,128.96 was received by the Commonwealth, in stock of the James River and Kanawha Company; but this account is charged only with that part thereof, which was expended in cash from March 19, 1823, to January 1, 1861, viz:—$12,500.00.

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FRO JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from

	Number of shares.	Par value of shares.	COST	
			Expended through the Common-wealth Fund.	Expended through the Internal Improvement Fund
pital Stock issued to the Commonwealth, (Continued.)				
Bonds of the State loaned to the James River and Kanawha Company:				
As per act passed March 25, 1842, ... $ 250,000.00				
" " " " " 1, 1847, ... 1,236,000.00				
" " " " January 25, 1850, ... 110,000.00				$1,596,000.00
Bonds of the James River and Kanawha Company:				
Guaranteed by the State and assumed in accordance with the act of March 23, 1860:				
As per act passed March 23, 1839, ... $1,400,000.00				
" " " " " 9, 1849 ..... 350,000.00				
" " " " " 12, 1849, ... 150,000.00				
" " " " " 15, 1850, ... 360,000.00				$2,260,000.00
Total amount due the Commonwealth and capital stock issued therefor, in accordance with the act passed March 23, 1860, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241.670.45

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMP.

count of construction and subscription to capital stock, ...	32,000	$ 3,200,000.00		$3,416,666.30
count of debt due the Commonwealth, guaranteed bonds and annuity assumed, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45
Total, ...	104,000	$10,400,000.00	$708,042.66	$8,658,336.75

Par value of the stock of the James River and Kanawha Company owned by the Commonwealth on January 1, 1861, and the cost thereof in cash from March 19, 1823, to January 1, 1861, excluding the Bank of Virginia stock, referred to above, and all interest due the Commonwealth at March 23, 1860.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be rrect as to the amount and that they represent expenditures by the Commonwealth of Virginia for the purposes dicated.

Certified Correct:
ARTHUR G. POTTER.

PRICE WATERHOUSE & CO.,
For the Plaintiff.

ND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST: Expended through the Commonwealth Fund.	COST: Expended through the Internal Improvement Fund	COST: Expended through the Sinking Fund.	COST: Total cost.	Dividends received by Commonwealth: Date	Dividends received by Commonwealth: Amount.
(Continued.)								
iver and Kanawha								
.....$ 250,000.00								
..... 1,236,000.00								
..... 110,000.00				$1,596,000.00		$1,596,000.00		
ompany:								
n accordance with								
.....$1,400,000.00								
..... 350,000.00								
..... 150,000.00								
..... 360,000.00				$2,260,000.00		$2,260,000.00		
and capital stock t passed March 23, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91		$10,092.00

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMPANY.

capital stock,.....	32,000	$ 3,200,000.00		$3,416,666.30		$3,416,666.30		
uaranteed bonds and annuity	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181.202.80	$6,130,915.91		
.....	104,000	$10,400,000.00	$708,042.66	$8,658,336.75	$181,202.80	$9,547,582.21		

River and Kanawha Company ry 1, 1861, and the cost there- ary 1, 1861, excluding the Bank d all interest due the Common-

n this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be resent expenditures by the Commonwealth of Virginia for the purposes

PRICE WATERHOUSE & CO.,
For the Plaintiff.

Of the total capital investment of the James River and Kanawha Company as reported by that Company at September 30, 1860, 3.49% was located in West Virginia.

Certified Correct:
CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY,
For the Defendant.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1823, to January 1, 1861

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1872 to January 1, 1861

Prepared by

THOMAS BIRD DIXCY

Certified Public Accountant

59 Church Street

N. Y. York

COMMONWEALTH OF VIRGINIA.

Summary of Cash Receipts and Disbursements from March 19, 1823 to January 1, 1861.

Balances, March 19, 1823:		
Commonwealth Fund	$ 180,019.23	
Internal Improvement Fund	21,022.19	
Literary Fund	94,021.42	$ 295,062.84
Net profit on State bonds and certificates of indebtedness purchased, below par, from March 19, 1823 to January 1, 1861, Schedule No. 1		90,788.35
Value of shares of stock of James River Company, at $500.00 per share, purchased by the Commonwealth prior to March 19, 1823, deducted from principal of annuity to stockholders of the James River Company included in the Public Debt, per Joint Exhibit "A-1":		
	Shares	
Held by the Board of Public Works	284	
Held by the Literary Fund	138	
Total	422	
422 shares at $500.00 per share		211,000.00

RECEIPTS.

Amount of the public debt on the first day of January, 1861, per Joint Exhibit "A-1"	$32,919,863.93	
All moneys paid into the Treasury of the Commonwealth from the counties included within the present State of West Virginia during the period from March 19, 1823 to January 1, 1861; admitted to this account by counsel for West Virginia, per Joint Exhibit "F-1"	7,051,215.56	
Moneys received from counties within the territory now constituting the Commonwealth of Virginia, per Schedule No. 2	38,482,170.14	
Obligations of the Commonwealth of Virginia, other than the debt for public internal improvements, outstanding on the first day of January, 1861, per Schedule No. 3	2,204,898.19	
Other receipts, per Schedule No. 4	3,702,135.98	
Total receipts		84,360,283.80
Total		$84,957,134.99

DISBURSEMENTS.

Expenditures on account of appropriations made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, from March 19, 1823 to January 1, 1861; not including subscriptions to capital stock of internal improvement companies, nor such other expenditures as have been rejected from this account by counsel for West Virginia, per Joint Exhibit "C-1"	$ 1,251,288.92	
Expenses of the government of Virginia from March 19, 1823 to January 1, 1861, admitted as "ordinary expenses" by agreement between counsel for Virginia and for West Virginia, per Joint Exhibit "D-1"	18,207,684.29	
Expenditures on account of subscriptions to capital stock of joint stock companies, including banks, wholly or partly within the territory now constituting the State of West Virginia, in which the value of the equity of West Virginia, therein, is to be ascertained, except in banks, where the value of such equity is shown in the exhibit, per Defendant's Exhibit "G-1"	11,083,051.04	
Expenditures on account of banks and public internal improvements charged, by the Defendant, to the present Commonwealth of Virginia, per Schedule No. 5	27,586,527.60	
Expenditures on account of items not charged, by the Defendant, to the State of West Virginia, per Schedule No. 6	24,356,330.05	
Investments in bonds other than State bonds (for public improvements) and other investments not charged to the State of West Virginia, per Schedule No. 7	305,375.64	
Total disbursements		$82,790,257.54
Balances due from State agents on account of State bonds delivered for sale; and loss thereon and discount on bonds sold; at January 1, 1861, per Schedule No. 8		1,062,502.97
Balances, January 1, 1861:		
Commonwealth Fund	255,180.99	
Internal Improvement Fund	5,958.28	
Literary Fund	23,985.18	
Sinking Fund	$19,250.03	1,104,374.48
Total		$84,957,134.99

Net Profit on State Bonds and Certificates of Indebtedness Purchased, Below Par, from March 19, 1823 to January 1, 1861.

On State bonds issued under act of February 16, 1825, account of James River Company, par value of $7,400.00, purchased for $6,290.00, through the Internal Improvement Fund	$ 1,110.00	
On State bonds and bonds of the James River and Kanawha Company guaranteed by the State, purchased by the sinking Fund, established by act of March 10, 1835	872.39	
On State bonds purchased and canceled by the Sinking Fund, established by act of March 26, 1853, less interest accrued at time of purchase, where not separated from principal on books	12,091.04	
On State bonds purchased by the Sinking Fund, established under act of March 26, 1853, and held uncanceled, less interest accrued at time of purchase, not separated from principal on books	65,905.42	
On State bonds purchased by the Literary Fund, and held uncanceled	13,422.00	
Total		$93,400.85
Less:		
Premium on a bond of the James River and Kanawha Company guaranteed by the State, par value $500.00, purchased, through the Internal Improvement Fund, for $507.50	$ 7.50	
Premium on $50,000 of State bonds issued under act of Feb. 24, 1823, account of James River Co., purchased through the Internal Improvement Fund	1,250.00	
Difference between value at $500.00 per share, at which amount the shares are included in the principal of the annuity to the stockholders of the James River Company, assumed by the State in accordance with act passed March 23, 1860, of 87 shares, viz: $43,500.00, and cost of these shares, viz: $44,855.00, purchased by the Literary Fund	1,355.00	
		2,612.50
Net profit		$90,788.35

SCHEDULE NO. 1.

Moneys Received from Counties Within the Territory Now Constituting the Commonwealth of Virginia.

Bonus, received in cash, from banks within the present State of Virginia		$ 1,036,932.93
Bristoe estate (presumed to be an escheat):		
Sale of lots in Prince William County	$17,289.18	
Net income from the estate	7,914.05	25,203.23
Buckingham Furnace Lands	5,671.77	
Less charges applicable thereto	973.66	4,698.11
Clerks of County and Corporation Courts		571,053.84
Clerks of Superior Courts		308,238.45
Clerks of District Courts		2,890.90
Clerks of Superior Courts of Chancery		12,427.29
Costs, Civil and Criminal Prosecutions		6,273.00
Dividends on bank stocks		5,936,628.70
Dividends and interest received from turnpikes and roads lying wholly within the present State of Virginia		118,115.18
Dividends and Interest received from railroad companies, wholly within the Present State of Virginia		1,748,570.23
Dividends and interest received from canal and navigation companies, wholly within the present State of Virginia		321,467.78
Dividends received from turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia; Virginia's proportion on mileage basis		1,545.35
Escheats, less refunds and expenses		51,400.55
Fines, forfeitures and penalties, less refunds, etc.		307,004.68
James River and Kanawha Company		9,739.79
Virginia's proportion of dividend, amounting to $10,092.00 on stock of above company, on the basis of amount of capital invested within the territory now constituting the two present States.		
Lands, sale of unappropriated		46,873.48
Lands, redemption of		26,050.07
Lands, sales of delinquent and forfeited		18,804.75
Lands, redemption of and sales of delinquent and forfeited, less refunds and expenses		5,024.29
Militia fines, net		360,268.92
Northwestern Turnpike Road		38,788.51
Tolls collected at gates located within the present State of Virginia.		
Staunton and Parkersburg Road		8,740.68
Tolls collected at gates located within the present State of Virginia.		

Southwestern Turnpike Road, tolls		28,117.91
Taxes, general, net		26,407,649.32
Taxes, capitation, net		307,362.97
Taxes, free negroes, net		79,720.29
Tax on dividends, net		362,659.18
Tax on railroad travel		123,613.34
Tax on notarial seals		177,994.21
Taxes, collateral inheritance:		
Virginia	3,330.24	
County not recorded	348.85	3,679.09
Voluntary enslavement		4,695.79
Miscellaneous:		
Virginia	10,069.73	
Undivided (not claimed for West Virginia.)	9,867.60	19,937.33
Total		$38,482,170.14

SCHEDULE NO. 2.

Obligations of the Commonwealth of Virginia, Other Than the Debt for Public Internal Improvements, Outstanding on the First Day of January, 1861.

Temporary loans, in anticipation of taxes, as per the act of March 7, 1851	$ 2,000.00
United States: amount of surplus revenue received by Virginia, which was distributed by act of Congress, approved June 23, 1836, and accepted by the State in accordance with act passed December 20, 1836	2,198,427.99
Unclaimed dividends of incorporated companies	4,470.20
Total	$2,204,898.19

SCHEDULE NO. 3.

Other Receipts.

Bank of the United States:		
Dividends	$ 45,750.00	
Sale of 500 shares	50,351.00	
		$ 96,101.00
Chesapeake and Ohio Canal Company:		
Interest on debt to state for interest paid on guaranteed bonds		6,372.00
Dismal Swamp Canal Company:		
Repayment of loan made prior to March 19, 1823..		37,500.00
Dividends on capital stock of the James River Company owned by the Board of Public Works, being dividends on and after July 1, 1835, received from the James River and Kanawha Company.....		166,140.00
Interest:		
On shortage of Jerman Baker, State Treasurer, in Commonwealth Fund	$ 1,258.65	
On surplus revenue of the United States, deposited with Virginia, loaned to banks, etc.....	111,419.37	
On loan to Richmond and Petersburg Railroad Company	2,695.88	
On debt of the James River and Kanawha Company, due the State	142,181.74	
On guaranteed bonds of the James River and Kanawha Company, less amount of interest accrued at time of purchase of the bonds.....	2,713.83	
On United States five per cent. stock of 1821....	388.67	
On loans to the James River and Kanawha Company	603,965.37	
On loans to Kanawha Board, of James River and Kanawha Company in accordance with act of March 23, 1860	1,500.00	
		866,123.51
James River Company (on State account):		
Tolls and other income, net	$557,677.38	
Re-sale of James River Company bonds, purchased prior to March 19, 1823	30,300.00	
		587,977.38
Literary Fund, amounts received on account of principal of investments made prior to March 19, 1823:		
United States six per cent. stock redeemed....	$ 13,000.00	
Farmers Bank of Virginia stock sold for $9,762.00, less $2,575.00, paid for stock purchased after March 19, 1823	7,187.00	
United States Bank stock	78,350.00	
Loans to individuals	80,000.00	
Washington College loan	2,000.00	
Profit on United States stock redeemed $818.18, less premium of $420.00 on City of Richmond stock purchased after March 19, 1823	398.18	
		180,935.18
Net income from sundry investments of the Literary Fund not including interest on State bonds, so held, dividends on James River Company stock paid by the State nor dividends from banks in the present State of West Virginia		968,195.00

Northwestern Turnpike Road:		
Profit on investment in United States stock...	$ 805.43	
Profit on investment in Bank of the Valley stock..	378.00	
		1,183.43
Preston, John, State Treasurer, on account of shortage prior to the year 1820		53,884.40
Premium on State bonds sold		354,176.75
Rentals, net		49,158.99
Staunton and Parkersburg Road:		
Interest on sundry accounts		451.16
United States, Revolutionary Claims:		
Through the Commonwealth Fund	$ 474,475.46	
Less payments on account of half pay claims and fees	410,703.50	
	$ 63,771.96	
Through the Literary Fund, less commissions	182,441.48	
		246,213.44
Upper Appomatox Company:		
Repayment of loan made prior to March 19, 1823 and interest thereon		11,791.74
Winchester and Potomac Railroad Company:		
Annuity	$ 65,075.00	
Interest on loans	10,856.97	
		75,931.97
Total		$3,702,135.98

SCHEDULE NO. 4.

Expenditures on Account of Banks and Public Internal Improvements, Charged, by the Defendant, to the Present Commonwealth of Virginia.

On account of subscriptions to capital stock of banks within the territory now constituting the Commonwealth of Virginia	$ 2,108,591.00
On account of subscriptions to capital stock of turnpike and road joint stock companies, wholly within the territory now constituting the Commonwealth of Virginia	1,897,747.22
On account of subscriptions to capital stock of bridge companies, wholly within the territory now constituting the Commonwealth of Virginia	49,622.16
On account of subscriptions to capital stock of Navigation companies, wholly within the territory now constituting the Commonwealth of Virginia	908,173.17
On acccount of subscriptions to capital stock of railroad companies, wholly within the territory now constituting the Commonwealth of Virginia	13,713,256.55
On account of appropriations to turnpikes and roads wholly within the territory now constituting the Commonwealth of Virginia	791,888.04
On account of the construction of the Blue Ridge	

railroad		1,604,824.73
On account of appropriation for bridge at Covington		6,007.07
On account of appropriations to turnpikes and roads extending into and between the territory now constituting the two present States; Virginia's proportion on an actual cost and mileage basis		247,289.33
Alexandria Canal Company stock subscription..		272,000.00
Amount of loans to railroad companies, wholly within the territory now constituting the Commonwealth of Virginia, which were unpaid on January 1, 1861		2,930,000.00
On account of the construction of the Covington and Ohio Railroad, lying partly in the present Commonwealth of Virginia and partly in the present State of West Virginia, no part of the cost of which has been charged to West Virginia by the Defendant, under instruction of her counsel		2,787,128.33
Winchester and Potomac Railroad Company:		
Subscription to capital stock.....	$120,000.00	
Money loaned by the State.....	150,000.00	270,000.00
The above railroad lay, partly, within the territory now constituting the State of West Virginia. The stock and debt as above was surrendered, by Virginia, in the year 1846, for an annuity of $5,000.00. Under authority of an act passed by the Commonwealth of Virginia, February 22, 1866, the Winchester and Potomac Railroad Company was relieved from payment of the annuity by paying into the treasury of Virginia, bonds of the State amounting to $83.333.33, to cover the principal of the annuity, and a further sum to cover the amount of annuity in arrears. In view of the above no part of the original expenditure amounting to $270,000.00 is charged to West Virginia.		
Total		$27,586,527.66

SCHEDULE NO. 5.

Expenditures on Account of Items Not Charged by the Defendant to the State of West Virginia.

Brandonville, Kingwood & Evansville Road		$ 10,595.73
Bath, Town of, Loan to		2,500.00
Berryville & Charlestown Turnpike Co.		20,455.74
On account of subscription to the capital stock of the Berryville and Charlestown Turnpike Company, which turnpike extended into and between the territory now constituting the Commonwealth of Virginia and State of West Virginia. Omitted from Defendant's Exhibit "G-1" (the seventh inquiry of the decree of reference), because the road was purchased by the State, the stock interests, thereafter becoming valueless. A proportion of the purchase price paid for the physical property is included in Joint Exhibit "C-1."		
Birthplace of Washington, Land		139.21
Boundary Lines		16,704.78
Connollee, Thornton, Refund		186.70
Conventions, Expenses of		258,906.28
Chief Justice Marshall, Portrait of		500.00
Commission to South Carolina regarding Federal Relations		2,500.00
Contingent Fund (gun houses in Virginia)		1,000.00
Counterfeit Money, charged off		190.00
Cannon-house, 71st Regiment		110.00
Clarksburg & Buckhannon Turnpike Co.		19,259.36
Chesapeake & Ohio Canal Company stock subscription (in Maryland)		250,000.00
Calling out Militia at Wheeling in 1836		1,099.00
Damages remitted		93.96
Deaf, Dumb and Blind, Institute for:		
For site and buildings	$ 68,320.94	
Land, fencing, boiler-house, etc.	7,000.00	
Heating, lighting, etc., plant	25,341.00	
		100,661.94
Experimental Railway		10,000.00
Entertaining		3,602.03
Eastern Lunatic Asylum (Williamsburg):		
Buildings	$ 72,318.88	
Less receipts	4,054.69	
		68,264.19
Gas installation		6,000.00
Enclosure walls, etc.		13,161.00
Additional charges on buildings, etc.		38,589.00
Furniture, buildings, land, etc.		7,266.00
Exchange, expense of in paying interest on bonds		17,071.57
Expenses of the Board of Public Works	$ 203,379.38	
Less amount included in Joint Exhibit "D-1," as ordinary, amount excluded being extraordinary	164,917.76	
		38,461.62

Free persons of color—transportation to Liberia		26,103.50
Fugitive slave expense		2,201.00
Gun-house at Alexandria		900.00
Gun-house at Richmond, Fayette Artillery		1,079.09
Harper's Ferry raid	$ 255,745.77	
Less receipts	3,982.12	
		251,763.65
Insurrection of slaves in year 1831		18,969.41
International exchanges		2,836.19
Improvement of Public Square		1,456.91
Interest:		
On Public Debt	$18,324,044.50	
On Treasury Notes	133,527.34	
On Temporary Loans	107,844.57	
On old Military Debt of 1814 and prior	9,331.43	
		18,574,747.84
Interest on payment made to penitentiary before due		12,897.96
Interest on payments by the State for subscription to stock of Northwestern Bank of Virginia		8,091.33
Interest paid on bonds of the Chesapeake and Ohio Canal Company, guaranteed by the State		250,709.66
Interest on sundry current accounts, net		40,373.13
James River Company dividends, etc., accruing while property of that company was owned by State, paid afterward		3,619.09
James River Company:		
Dividends paid by the State to stockholders of, not including dividends on stock owned by the State	$ 81,415.28	
On account of annuity to stockholders assumed in accordance with act passed March 23, 1860	2,820.00	
		84,235.28
Jefferson, Statue		9,950.00
Kingwood & West Union Turnpike Co		18,140.61
Lafayette Reception		11,998.17
Lyle, amount received in 1780, refunded		125.33
Lemmon Slave Case—expense of prosecution		1,648.85
Lot on Governor street	$ 3,827.25	
Less, for lot on Franklin street, sold	2,843.33	
		983.92
Museum property		6,958.50
Maps (Commonwealth Fund)	$ 16,628.04	
Maps (through Internal Improvement Fund)	11,446.48	
		28,074.52
Medical College of Virginia (Richmond): Construction		25,000.00
Mexican War expense	$ 32,101.16	
Less receipts	27,943.66	
		4,157.50

Monroe Monument and Burial	$ 4,280.54	
Less receipts	393.00	
		3,887.54
Margaret Academy (Accomac county, Va.):		
For support	$ 500.00	
For improvement and repairs	1,000.00	
		1,500.00
Northwestern Turnpike Road, repairs, etc. (West Virginia's proportion)		109,587.74
Northwestern Turnpike Company of Alleghany, a Maryland corporation, formed for the purpose of constructing that part of the Northwestern Turnpike Road which ran through formerly Alleghany county, now Garrett county, Maryland, on account of subscription to the capital stock		7,882.92
Pensioners, Cincinnati Society		696.87
Pensioners		65,997.02
Penitentiary, erecting Hospital		9,346.98
Penitentiary, lot for		3,000.00
Penitentiary, pipe for water supply		1,600.50
Pauley, L. A. (Augusta county), claims dating from 1782		434.15
Powder, arms and armory, year 1860		79,471.59
Primary Schools, out of income		2,400,331.11
Slaves executed, condemned and transported	$ 575,450.03	
Less receipts from sales	247,761.46	
	$ 327,688.57	
Less net amount received through the Literary Fund for sales of runaway slaves and free negroes	16,520.22	
		311,168.35
Swords and medals voted by Assembly		11,681.35
Surveying: Paid to James River and Kanawha Company for surveying Potts and Second Creeks		852.37
Surveying		250,206.56
State bonds loaned to the James River and Kanawha Company, Kanawha Board, for improvements in accordance with act passed March 23, 1860, omitted from charges against West Virginia by the Defendant under instructions of her counsel		60,000.00

Staunton & Parkersburg Road, repairs, etc. (West Virginia's proportion)		21,700.74
State Courthouse		22,387.54
Square, Capitol, Governor's Mansion, etc.: Guard-house, grading, etc., installing water and gas, and purchase of lot		12,278.47
Treasury Notes, overpayment of		50.00
Treasury Notes, expense of printing, etc.		375.74
Tucker, J. Randolph, Attorney General, amount paid to, in the year 1859, on account of prosecution, etc., of Selden, Withers & Company		500.00
Trans-Alleghany Lunatic Asylum		27,000.00
University of Virginia, buildings and water system		25,000.00
Virginia Military Institute, buildings		151,000.00
Virginia Military Institute, Statue of Washington		10,000.00
Washington College, unexplained payment in 1848		8,114.64
Warehouses purchased in present State of Virginia		37,550.15
Washington Monument (at Richmond)	$ 262,249.22	
Less receipts	92,542.41	
		169,706.81
Wheeling, City of, for interest on guaranteed bonds	$ 30,627.45	
Less receipts	14,940.00	
		15,687.45
War, arms and munitions of		3,346.13
Wars, expenses of old		20,132.35
Weighmaster of Live Stock, land at Richmond		1,500.00
Western Lunatic Asylum (Staunton):		
Buildings	$ 164,642.37	
Less receipts	4,000.00	
		160,642.37
Water, gas and heating plant		40,685.00
Land, enclosure walls, etc.		25,988.01
Support, land, etc.		10,700.00
Total		$24,356,330.05

SCHEDULE NO. 6.

Investment in Bonds Other Than State Bonds (for Public Improvements), and Other Investments Not Charged to the State of West Virginia.

Through the Internal Improvement Fund:			
Bonds of the James River Company, issued under act passed February 17, 1820		$31,300.00	
State bonds issued for bonds of the James River Company, under act of March 18, 1840	$40,000.00		
under act of March 16, 1847	25,300.00	65,300.00	
			$ 96,600.00
Through the Literary Fund:			
Virginia Revolutionary 6% bonds		$ 3,074.77	
Bank of Virginia, stock		18,449.12	
University of Virginia, loan No. 5		40,000.00	
University of Virginia, loans No. 6 and No. 7		20,000.00	

Bonds of the James River Company, issued under act passed February 17, 1820, par value of $15,000.00 purchased for	15,960.00	
Richmond Academy stock	400.00	
Bank of the Valley, stock	10,134.00	
Loan to Emory and Henry College	18,000.00	
The Faculty of the Medical Department of the Hampden Sidney College, at Richmond: Amount invested in land and buildings	25,000.00	
Medical College in the valley of Virginia; invested in property (at Winchester)	6,400.00	
Davis's book on Criminal Law, copyright purchased	12,000.00	
		169,417.89
Through the Commonwealth Fund: Virginia Revolutionary 6% bonds		39,357.75
Total		$305,375.64

SCHEDULE NO. 7.

Balances Due from State Agents on Account of State Bonds Delivered for Sale; and Loss Thereon and Discount on Bonds Sold, At January 1, 1861.

From Selden, Withers Company:		
Account of coupon bonds	$548,173.98	
Account of sterling coupon bonds	265,447.83	
Total	$813,621.81	
Less amount received through the Sinking Fund, applied on above	22,800.00	
		$ 790,821.81
From James F. Souther:		
Account of coupon bonds	$100,000.00	
Account of sterling coupon bonds	86,650.00	
Total	$186,650.00	
Less amount received through the Sinking Fund, in full settlement	17,333.59	
Loss		169,316.41
Discount on sterling coupon bonds sold by Selden, Withers and Company		102,364.75
Total		$1,062,502.97

SCHEDULE NO. 8.

Doc. No. 17

mes River and Kanawha Company

PROCEEDINGS

Of the Stockholders of the James River and Kanawha Company, at their Twenty-Sixth Annual Meeting in October, 1860.

Richmond, Monday, October 22, 1860.

The twenty-sixth annual meeting of the stockholders of the nes River and Kanawha Company was held at the office the said company in Richmond, on Monday, the 22d day October, 1860; present:

e Bank of Virginia, by Clement R. Barksdale, Alfred T. Harris and R. Milton Cary, proxies, having	632	votes
e city of Richmond, by Peachy R. Grattan, Samuel D. Denoon and Jas. M. Talbott, proxies, having	1449	"
e city of Lynchburg, by Samuel McCorkle, proxy, having	175	"
Total corporate representation other than the state	2256	"

Individual stockholders, in person, having	483	votes
Individual stockholders, by proxy, having	1490	"
Total number of votes other than the state	4229	"
The commonwealth of Virginia, by William B. Taliaferro of Gloucester, Samuel McCorkle of Lynchburg and James B. Dorman of Lexington, proxies, having a number of votes equal to three-fifths of the whole vote present	6343	"
Total	10572	"

being a majority of the votes that could be given on all the stock of the company as at present held.

On motion of General Taliaferro, the meeting was organized by the appointment of Philip St. George Cocke, Esq., as chairman—William P. Munford, the secretary of the company, attending as clerk.

The president, Col. Thomas H. Ellis, on behalf of the board of directors, submitted the annual report and accompanying documents.

The report having been previously printed for the use of stockholders, on motion of Mr. Grattan, the reading of the same was dispensed with.

The president made a statement in regard to the returns from the Kanawha board, and in reply to an enquiry, read the portion of the report relating to this subject.

The president likewise informed the stockholders, that since closing the report just submitted, he had received a letter from Mr. Ernest de Bellot des Minieres, dated Bordeaux, October the 1st; that Mr. De Bellot arrived in Paris on the 26th September, and soon after left for Bordeaux, the residence of his family, in consequence of several of the principal persons connected with the proposed Virginia canal company being in Algeria—they being, also, the chief persons interested in an important concession made by the French government for the construction of railroads in that posses-

sion of France; that, awaiting their return to Paris, he intended to remain in Bordeaux until the 12th instant. He writes that his hopes of a satisfactory conclusion of the object of his visit to France, are more than ever good—that the political horizon, though much clouded, does not alarm him —and that he is highly gratified at his brothers' impressions in reference to the agreement of the first of September.

On motion of General Taliaferro, the report of the board of directors, and the documents accompanying it, were referred to a committee of thirteen; which was constituted as follows: William B. Taliaferro of Gloucester; Samuel McCorkle of Lynchburg; James B. Dorman of Lexington; Peachy R. Grattan, Clement R. Barksdale, Joseph Mayo, Thomas W. McCance, Bolling W. Haxall, R. Milton Cary, Henry C. Cabell, Dr. O. A. Crenshaw, Samuel T. Bayly and Samuel D. Denoon of Richmond.

On motion of Mr. Grattan, the meeting adjourned until tomorrow evening at 7:30 o'clock.

Tuesday, October 23, 1860.

The stockholders met pursuant to adjournment. In the absence of Mr. Cocke,

On motion of General Taliaferro, Peachy R. Grattan, Esq., was called to the chair.

General Taliaferro presented and read the following report and resolutions:

The committee to whom were referred the report of the board of directors and the accompanying documents, have duly considered the same, and beg leave respectfully to report:

That they congratulate the stockholders on the improved and apparently improving condition of the company in every department of its affairs. The increase in the receipts from its several works—dock, canal, connections, turnpikes, bridges and ferry, amounting in the aggregate to more than sixty

thousand dollars during the year—has, of itself, evidently afforded relief to the administration, and, doubtless, imparted new energy to the entire organization; while the great measure of converting the debt into stock, granted by the legislature last winter, has relieved the company from a load of oppressive embarrassment, and contributed to produce a most happy effect upon the public mind in reference to the value of the improvement.

Nothing has occurred, so far as the committee are apprised, to cast doubt upon the success of the arrangement heretofore approved with such remarkable unanimity by the stockholders, for the completion of the improvement by the employment of French capital: And therefore the committee confidently anticipate that brilliant future for the company and for Virginia, to which the report of the board directs attention.

Among the subjects presented by the board in their report, none seems to call for a special resolution on the part of the stockholders.

The omission of the president pro tempore of the Kanawha board to present a report at this meeting, is presumed to have been accidental; since by the by-laws of the Kanawha board it is his duty, at every annual meeting, to lay before the stockholders a report of the condition of the improvement under the control and direction of that board, the progress of the works under its direction, the conduct of the officers and agents appointed or employed by it, the state of its finances, and such other matters as he may deem interesting. Though not required by the by-laws, it is obviously proper that a statement of the receipts and disbursements of the Kanawha board should be duly transmitted to the secretary here, for the purpose of being incorporated into his summary statement of the receipts and disbursements of the company. A resolution on that subject is herewith reported.

It affords the committee pleasure, while performing, as they conceive, an act of justice, to pay a deserved compliment

to an intelligent, faithful and assiduous officer; and recognizing the inadequacy of the compensation heretofore allowed to the secretary for his constant services, they unanimously recommend an increase of his salary.

The following resolutions are accordingly respectfully submitted:

1. Resolved, that hereafter it shall be the duty of the Kanawha board to return to the secretary of this company, on or before the fifteenth day of October in each year, a summary statement of the receipts and disbursements of that board for the preceding fiscal year.

2. Resolved, that the salary of the secretary of the company be fixed at the rate of two thousand five hundred dollars, commencing on the first day of October instant.

3. Resolved, that when this meeting adjourns, it will adjourn to meet on Monday, the 28th day of January, 1861, unless the interests of the company should require an earlier meeting. In which event, the president is hereby empowered and directed to convene the company at an earlier day, giving reasonable notice thereof to the stockkholders.

On motion of Col. Cabell, the report and resolutions were unanimously adopted.

The president stated that the commonwealth, in consideration of her increased subscription to the capital stock of the company, would be entitled to the appointment of one of the directors heretofore appointed by the stockholders other than the state. He submitted a letter from Mr. Boyd, addressed to the board of directors some time since, conditionally resigning his place as a director.

Mr. Grattan stated, that as a friend of Mr. Boyd, he felt authorized to withdraw his name from an election in which there might be a competition between him and Col. Bondurant for the office of director.

The meeting then proceeded to the election of officers.

On a nomination by General Taliaferro, Col. Thomas H. Ellis was unanimously re-elected president.

On a nomination by General Taliaferro, David J. Burr, Esq., was re-elected director on the part of the state and the private stockholders.

On a nomination by Col. Cabell, Col. Thomas M. Bondurant was re-elected director on the part of the private stockholders.

The chairman announced the following committees:

Committee to examine the books, papers and accounts of the company for the present fiscal year: Messrs. Lewis Webb, Samuel Marx, Bolling W. Haxall, Lewis D. Crenshaw and Thomas W. McCance.

Committee to examine the books, papers and accounts of the Kanawha board for the past and present fiscal years: Messrs. James C. McFarland, Thomas L. Broun and George S. Patton.

On a nomination by Mr. Dorman, Messrs. James L. Carr and John D. Lewis, were re-elected directors on the part of the private stockholders for the Kanawha board

On motion of Mr. Barksdale, the meeting then adjourned.

Documents accompanying the Proceedings of the Stockholders, at their Annual Meeting in October.

No. 1—Report of president and directors.

No. 2—Tables showing the trade of the dock.

No. 3—Report of the chief engineer.

No. 4—Report of the superintendent of repairs on the first division.

No. 5—Report of the superintendent of repairs on the second division and North River improvement.

No. 6—Toll gatherer's table showing the quantity and probable value of all articles cleared at the Richmond office.

No. 7—Toll gatherer's table showing the quantity and probable value of all articles cleared at the Lynchburg office.

No. 8—Toll gatherer's table showing the quantity and probable value of all articles cleared at the Buchanan office.

No. 9—Secretary's table showing the quantity and probable value of all the articles conveyed on the canal.

No. 10—Statement showing the quantities of the principal articles conveyed on the canal in each fiscal year from 1842 to 1860.

No. 11—Statement showing the amount of actual tonnage, the amount of tolls on tonnage and passengers, the amount paid for expenses and repairs, etc., in each fiscal year from 1841 to 1860.

No. 12—Table showing the number of tons and amount of tolls under each rate in the tariff.

No. 13—Monthly receipts of dockage.

No. 14—Monthly receipts of lock tolls.

No. 15—Monthly receipts of tolls on the canal.

No. 16—Report of the agent on the Kanawha road.

No. 17—Summary statement of the receipts and disbursements of the company for the fiscal year.

No. 18—Summary statement of receipts and disbursements from the organization of the company.

No. 19—Letter from Governor Letcher to the president.

No. 20—Report of the Kanawha board.

(R.)—Abstract of tolls collected at Charleston.

(A.)—Statement of receipts and disbursements of the Kanawha board for the fiscal year.

(B.)—Statement of receipts and disbursements by Kanawha board of six per cent. registered stock.

No. 21—Contract for the improvement of the Kanawha River.

No. 22—Report of the committee of stockholders on the books, papers and accounts of the company.

No. 1

President's Report

Richmond, Oct. 22, 1860.

Gentlemen:

The board of directors now make their report of the condition of the company for the year ending the 30th of September, 1860.

The business of the Richmond dock continues to be marked by the same steady progression which has been noted for the last six years. Its revenue has increased $3,712.16 during the past fiscal year, indicating an increase in many of the leading articles received and shipped, which is more particularly shown by the following comparative statement:

Articles	Year ending September 30, 1859.	Year ending September 30, 1860.	Increase.
Inward Trade.			
Coal	15,062 tons	29,897 tons	14,835 tons
Fish	16,404 barrels	25,470 barrels	9,066 barrels
Guano	17,223 tons	22,778 tons	5,555 tons
Hay	20,220 bales	29,813 bales	9,593 bales
Iron, pig and scrap	6,051 tons	13,333 tons	7,282 tons
Lime	28,349 casks	48,491 casks	20,142 casks
Oats	26,032 bushels	27,035 bushels	1,003 bushels
Oyster shells	6,050 bushels	33,512 bushels	27,462 bushels
Plaster	5,832 tons	8,149 tons	2,317 tons
Salt	25,729 sacks	73,177 sacks	47,448 sacks
Shingles	3,037,485	3,116,600	79,115
Tar and rosin	1,604 barrels	2,053 barrels	449 barrels
Wheat	317,806 bushels	360,918 bushels	43,112 bushels
Outward Trade.			
Flour	389,635 barrels	423,194 barrels	33,559 barrels
Tobacco	54,977 packages	56,367 packages	1,390 packages
Tobacco	576 tierces	1,117 tierces	541 tierces
Wheat	102,309 bushels	143,000 bushels	40,961 bushels

The trade with the northern cities seems to have fallen off; since the number of assorted cargoes which arrived from Baltimore, New York and Boston, during the year 1859 was 205, while the number during the year 1860 was 170—a decrease of 35 cargoes. The whole number of arrivals of boats and vessels in the dock, was 2,123, the whole number of departures, 2,337. The usual statement, furnished by the collector, is herewith communicated.

The receipts from dockage, and the disbursements on account of the dock, during the year, have been as follows:

Received,		
From dockage		$50,128.03
Disbursed,		
For expenses and repairs	$3,457.26	
For salaries of agents	4,264.26	7,721.52
Net income		$42,406.51

The receipts from dockage, it is believed, would be increased, if additional accommodation were afforded for landing heavy articles, such as lumber and plaster, on the south side. The condition of the company, however, until recently, has been such as to forbid any expenditures of money not called for by necessity.

The paving of Water street, from 23d street to Rocketts, by the city, has been completed, and the paving from 14th to 17th streets is in progress. This will render necessary the raising of the wall on the north side of the dock from 14th to 17th street, and from 23d to 26th street, an aggregate length, including the intermediate quays, of about 2,200 feet of stone work, which has been let to contract, and is already commenced.

A practical enlargement of the dock has been effected, by the removal of the stationary bridge, in the line of 17th street, and the substitution of an iron pivot bridge, which being turned at pleasure, admits masted vessels into the upper

basin, extending to 14th street. A part of the old abutment was removed, and a new pier built in the centre. This bridge has a span of 31 feet 5 inches at each side from the centre, and when turned, presents a passage of 29½ feet in the clear, for vessels. The girders, being nearly 32 feet long, 2 feet wide, and ⅜ of an inch thick, are said to be the longest single pieces of iron of the same dimensions ever rolled. This bridge brings into available use about 1,300 lineal feet of additional wharfage. It was built by Mr. Joseph Heindl, at the cost of $4,883.50. A contract has been made with the same gentleman to build wrought iron bridges over the canal at the intersection of 5th, 7th and 12th streets in the city of Richmond, to substitute the wooden structures now requiring expensive repairs. The road bed of 5th street bridge is to be increased from 12 to 18 feet, and that of 7th street bridge, from 52 to 60 feet. They are to be of the same strength, and guaranteed in every respect, as railroad bridges are. Mr. Heindl, who is a graduate of the polytechnic school of Munich, proposes to form in this city an establishment for cast iron bridge building and iron superstructures of every kind.

It is with much satisfaction the Board are advised that the Richmond and Danville railroad company contemplate renewing their depot bridge, and that in doing so, actuated partly by a disposition to accommodate this company, they will construct it of iron instead of wood, which will enable them to give nearly two feet of additional height between the surface of the water in the canal and the lowest part of the superstructure. The permission to build the depot bridge originally, was granted by our company in a friendly spirit; but the bridge has been found by experience too low to admit the convenient passage of unloaded boats. The disposition, then, on their part to remedy this evil, evinces a sense of justice and comity towards a sister improvement which the board takes pleasure in recognizing.

Adjacent to the Danville depot lot, Messrs. Richard Barton Haxall and Lewis D. Crenshaw, present proprietors of the Columbia mills, have, with the permission of this com-

pany, built a handsome iron bridge over the canal, so that loaded wagons may pass from Virginia street to and from their mills. In the line of 13th street, near lock No. 5, they have likewise built a substantial stone bridge. They are constructing a lateral arched canal, leading from the "extended lock" of the Tide water connection into the body of a large addition to their mills, the foundation of which has been built up to the service. These are but indications, not less than an enlightened spirit of improvement, than of a material progress, in and around Richmond, perceptible to the most casual observer—a state of things, due in no small degree, as your board believe, to the facilities afforded by the several improvements of the James River and Kanawha company. Prominent among the establishments, public and private, recently erected, connected with the business of the dock or canal, the board would mention the new inspection warehouse for tobacco, belonging to Edward Mayo, Esq., eligibly situated near the Danville depot, between the dock and the river. The first inspection was made in the month of June last. This warehouse, embracing an area of more than four acres of land, will, when completed, be capable of holding seven thousand hogsheads of tobacco on the ground, covered by water-tight sheds.

The plaster mill of Mr. John H. Claiborne, the machinery of which is propelled by the waste water from the dock, at Shockoe creek aqueduct, receives between four and five thousand tons of plaster per annum from quarries in Nova Scotia, and furnishes from twenty-five to thirty thousand barrels of the purest ground plaster for agricultural uses. The capacity of the mill is equal to about double this product. The mill of Messrs. D. Lambert & Co., also on the dock, grinds from sixty to seventy barrels of plaster per day.

Messrs. R. J. White & Co. have erected on the south side of the dock an establishment for the manufacture of Foster's patent building block. This new building material, which is artificially composed of sand, gravel, lime and cement in cer-

tain proportions, is subjected while moist to great pressure, in steel moulds, and in the form of hollow blocks, and acquires the hardness of stone upon exposure to the atmosphere. The blocks are commonly ten inches long, five inches wide, and four inches high, and being formed by compression, and not baked, are consequently not distorted when finished, but perfectly true in form, as well as uniform in size. An air chamber running vertically through the center of each block, is so arranged to insure a circulation of air through the entire wall. Those who have used this material, speak of it in high terms. It makes a smooth, solid, well ventilated wall or house, in appearance equal to the finest dressed granite or free stone—becomes harder with age, and consequently absorbs a diminished quantity of water after each successive wetting, and is about as cheap as good common brick. The armory, now being constructed for the volunteers of Richmond, is to be built of this material.

On the north side of the dock, occupying the site of the former city gas works, is the establishment of the Lester Sewing Machine Company, nearly completed, and about to give employment to two hundred mechanics.

Messrs. Talbott & Brother and Ettenger & Edmond have considerably enlarged their establishments on the line of the dock; and near at hand are the well known "Eagle Works" of Mr. Philip Rahm. These gentlemen, in the manufacture of railroad engines, cars, machinery and fixtures, fire engines, saw mills, etc., give employment regularly to about four hundred hands, and turn out from their shops annually about $375,000 worth of work, which it is believed will compare favorably with that of any other establishments whatever. About $220,000 worth of their work is sent to states south of Virginia.

At Rocketts, this very day, Mr. Charles Y. Morris commences operations at his sugar refinery—expecting to refine from one hundred and fifty to two hundred barrels of sugar weighing from thirty to forty thousand pounds, per day.

Fronting this establishment, at Rocketts, is the ship yard of Messrs. Abrahams & Co., who have attained reputation for scientific skill in shipbuilding. These gentlemen have heretofore constructed for Richmond owners, at the yard in Baltimore, one ship of eighteen hundred tons, and twenty-nine schooners, brigs and barks, averaging about three hundred and seventy-five tons each, and all now afloat except one or two. The first ship of the Richmond and Liverpool line of packets, a vessel of eighteen hundred tons burden, built by those gentlemen at their Baltimore yard, will be launched in a few weeks; while the keel of the second ship, of the same line, has been laid in their yard at Rocketts. The yard which they have established here, within the past year, has two launching ways, and the capacity to construct about three thousand tons per annum. The best ship timber is obtained from the lands bordering on James River and the waters of the Chesapeake bay. But little of our mountain timber has yet found its way to the coast for shipbuilding purposes. Yet we know the illimitable supply and the superior quality which the region upon the line of the canal affords; and it is remembered as a remark often made by Judge Mason, after serving under two administrations as secretary of the navy, and while president of this company, that Virginia possessed a source of wealth in her mountain forests of which her citizens generally seemed to be unaware, and which he deemed second only in importance to her wonderful mineral deposits. There is adjoining the ship yard above referred to, a steam marine railway, of sufficient capacity to haul out the largest vessel or steamer that can come into this port. It is reputed to have a power equal to any in the United States. The fine bark Abigail, of 383 tons, belonging to the Richmond and Rio line, has been lately recalked and recoppered at this station—being the first vessel ever coppered in Richmond. The same vessel on her last voyage brought from the Plate River the first cargo of bone ash and bones ever imported into Richmond.

On the first level of the canal, within the enclosure of the Tredegar Iron Works property, the Virginia Car Spring Com-

pany have commenced the manufacture of vulcanized India-rubber car springs, of a quality reputed superior to those made under the famous Goodyear patent by the New England Car Spring Company—a corporation that has hitherto had a monopoly of this important item of railway supplies. The Virginia company vulcanize their rubber by new processes recently patented, and their springs possess a form which is believed to be better adapted to the strain they are to bear than any heretofore in use. But the most interesting feature of the enterprise is, that it fills up almost the only blank in the list of railway supplies now manufactured at Richmond—thus contributing to make Richmond one of the great railroad centres of the country, and enabling the directors of southern roads to purchase every thing they need at home.

Adjacent to the same property, the flouring mill of Messrs. Crenshaw & Fisher has been converted into a woolen factory, whose operations, while giving direct profitable employment to more than fifty hands, male and female, are doubtless but the beginning in one of the most interesting branches of industry, and will contribute to excite a spirit for the improvement of sheep and wool in every part of the state having convenient access to this market.

While thus adverting to industrial pursuits, so intimately connected with our own improvement, and owing, in a great degree, their prosperity, if not their origin, to it, it might appear invidious to pass without notice the extensive establishment of Messrs. Joseph R. Anderson & Co., known as the Tredegar Iron Works. These truly grand works are a pride to our city. Their importance as an adjunct to the canal may be estimated, when we consider the amount of rent they pay for water-power—that they employ from eight hundred to a thousand men—consume annually about four hundred thousand bushels of coal, some ten or twelve thousand tons of pig iron—and that they supply Virginia, and the states south of Virginia, and the Island of Cuba, from their rolling mill, spike factory, brass, iron and cast steel foundries, locomotive, boiler

and blacksmith shops, more than a million dollars of manufactured material every year. Here the enormous boilers of the United States frigates Roanoke and Colorado were built; and they are at this time casting heavy guns for the United States Navy, and water pipes, two feet in diameter, for the city. The same firm have just entered into a contract with the commissioners of the state, for enlarging and equipping the state armory, which also draws its supply of water power from the canal, with improved machinery for manufacturing, on a large scale, every description of fire arms.

Contemporaneously with these substantial evidences of prosperity and advancement, the city of Richmond laudably perseveres in her endeavors to improve the navigation of James River at and below Rocketts, so as to bring vessels of larger tonnage and deeper draught to our wharves. From a memorandum furnished by Washington Gill, Esq., the engineer in charge of the river improvement, the board learn that the contractors for removing the reef at Rocketts bar have succeeded remarkably well with their chisel and dredge, in breaking up and removing the solid granite and large boulders from the bed of the river, affording at this time a depth of from fifteen to twenty feet water over the rocks, where formerly only about twelve feet could be obtained. An outlay of a few thousand dollars more will open a channel one hundred feet wide and from eighteen to twenty feet deep through this reef. A contract has been entered into with the same parties for dredging a channel fifty feet wide and sixteen feet deep through Rocketts, Richmond and Warwick bars. The work of dredging was commenced early in July last. A channel has already been cut through Richmond bar, in compliance with the contract. More than twenty thousand cubic yards of sand and gravel have been removed up to this time. The entire work, under the contract for dredging, is expected to be completed early next spring. The importance of this river improvement, to the city of Richmond, as well as to the state at large, is too self-evident to require comment at our hands.

The board are much disappointed that a steam dredging machine built by the patentee in Philadelphia for the company, at an expense of $6,500, and intended chiefly to be employed in dredging at the mouth of Tye River, Judith's Creek and other places where heavy sand bars are formed in the ponds on the upper part of the line, proves unavailable for that purpose. Though built according to the dimension furnished, it turns out, that in consequence of the bulging of the sustaining walls of several of the old locks on the first division, the machine cannot pass through them. It will therefore be employed on the first level, in the dock, and at the mouth of the ship lock, taking the place of the old machine which was bought from the United States Government six years ago, and which is, indeed, so worn out as to require repairs almost equal to the cost of reconstruction.

The receipts from lock tolls have been $3,415.29, and the disbursements on account of the five locks of the Tide water connection, for repairs, $26.51, for salaries of agents, $549.98. Other expenditures chargeable to the Tide water connection have amounted to $842.07.

The board regret to announce the death of William S. Richardson, inspector at Richmond. He died on the 3d instant, having performed the duties of this responsible office, with firmness and integrity, for seven years. His place has been supplied by the appointment of George N. Skipwith, Esq., formerly an assistant engineer on the Richmond and Danville Railroad.

Reports from the chief engineer, and from the superintendents of repairs on the first and second divisions of the canal, and the North River improvement, are herewith submitted; also, the usual returns from the toll gatherers at Richmond, Lynchburg and Buchanan, and the secretary's statements, showing the quantities, classification and probable value of all tonnage and of tolls, the rates of toll, and the monthly receipts of tolls.

These documents exhibit a state of things in many respects highly gratifying. Neither from freshets, nor decay, nor ac-

cident, has there been any serious suspension of navigation. In the month of January the line was closed by ice from the 1st to the 13th day of the month, and in the month of February, from the 3d to the 6th, by the same cause; and in the month of July, the water was withdrawn from some of the levels for the usual systematic repairs; but beyond these, there was no detention of boats on the main line of the improvement at any time exceeding twenty-four hours. The most formidable impediments occur generally at the mouth of Tye River, and in some of the ponds on the second division, where the quantity of deposit brought down by heavy floods is often astonishingly large, rendering the constant employment of dredging machines more or less necessary. The present condition of the canal, so far as it affects navigation, is very good.

The number of boats which passed through the first lock above Richmond, during the fiscal year just past, was	9,974
The number for the previous fiscal year	7,510
Increase	2,464
The amount of tonnage during the past fiscal year, was	244,273 tons
For the previous fiscal year	206,295 "
Increase	37,978 tons
The amount of tolls on tonnage, collected during the past fiscal year, was	$224,179.90
For the previous fiscal year	172,849.62
Increase	$51,330.28
The amount of tolls on passengers, during the past fiscal year, was	$5,076.64
For the previous fiscal year	2,125.40
Increase	$2,951.24

Showing an improvement in every particular, for the fiscal year 1860, compared with the fiscal year 1859, and this too, notwithstanding the fact, that the wheat crop in Virginia and Tennessee, always so important to this line, has fallen far short of its usual standard of quality and quantity. An inspection of the statements just submitted will show:

Articles brought down the canal:	1859	1860
Bushels of wheat	723,479	695,388
Decrease, 28,091 bushels.		
Barrels of flour	104,434	78,711
Decrease, 25,723 barrels.		
Boxes of manufactured tobacco	57,181	53,076
Decrease, 4,105 boxes.		

There was a considerable increase in the articles of leaf tobacco, tobacco stems, coal, stone, wood, dried fruit, cotton, manganese, etc., descending the canal, and of articles ascending, a considerable increase in salt, plaster, coal, castings, nails, guano, etc.

The diminished quantity of flour and manufactured tobacco transported on our line, as above noticed, is owing not perhaps so much to the smaller products of these articles, as to another cause, which the board will briefly advert to.

The stockholders are aware that an injurious rivalry existed for several years between the South side railroad and the canal, for the transportation of freight, and that, under the instructions which they gave in March, 1858, the board adopted a low tariff, with the view to prevent any diversion of our accustomed trade. This was met by a counter movement on the other side, which rendered still further reductions on our part necessary. There is but one history for all such controversies: loss on both sides—which both parties would willingly avoid. In this case, we felt it to be peculiarly hard: the railroad was the junior improvement, minor in interest, and controlled by a policy which seemed to aim at trade for the

largest stockholder, to wit, the city of Petersburg, regardless of dividends, or consequences to the state and the other stockholders—the most urgent necessity existing in the meantime for the largest possible revenue derivable from the canal. The state being the principal ultimate sufferer in both cases, there was frequent protest and complaint in the legislature against the courts of the two companies. As far back as February of last year overtures were made by the South side company, which were met in an amicable spirit by our board. No schedule, however, was submitted or agreed upon for about a year, when one was adopted, to go into operation on the 20th day of February last. Since that time, therefore, the canal and railroad have been operating under a tariff of charges and tolls mutually agreed upon. This company has had reason to proclaim of a departure from the agreement in some respects, by the South side company—and among them, of arangements made which affect our trade in the important articles of flour and manufactured tobacco shipped at Lynchburg for northern markets. Nevertheless, in view of a steadily increasing aggregate revenue on our side, and in consideration also, the board take pleasure in saying, of fairer remuneration to a neighboring improvement and a sister city, they have been reluctant to give the notice, which either party is at liberty to give, for terminating the agreement.

Reference is made to the chief engineer's report for detailed information in regard to the principal works undergoing repair.

Bosher's Dam is so nearly completed, that the final estimate may be taken by the first of January next, if the weather and stage of water be favorable for such work. The company have paid $9,130 towards its reconstruction during the past fiscal year. The pond formed by this dam is important not only to admit the coal from the Norwood pits and the Burfoot pits, the castings from the Bellona arsenal, the granite (of which one of the finest quarries on our line has been developed by the construction of the dam), the daily supply of wood for

city use, and the agricultural product of the several estates on the south side extending from Bosher's Dam to Maiden's Adventure Dam, a distance of eighteen miles, but important also, as a feeder to the fourth level, upon which the Westham Iron Works depend for their supply of water power. In consequence of untoward circumstances, among which was an irregular supply of water, this valuable establishment, after going into blast about the first of May, was obliged to suspend having continued in blast only six or eight weeks. An incorporated company has recently been organized, under the name of the Westham Iron Company, by which the property is to be managed in the future. They will recommence work in a few days, and it is hoped, that hereafter nothing will occur to impair the public usefulness of the establishment or disappoint the just expectations of its owners.

The board regret to state that very unsatisfactory progress has been made with the Joshua Falls Dam, notwithstanding their anxious desire to see it completed at the earliest practicable day. This dam is in two parts—the main or original portion, extending from the northern shore to a southern abutment, and the new or secondary portion, which became necessary after the freshet of July 1842, extending from the original southern abutment to the present southern shore. The reconstruction of the latter portion, which is most urgently demanded, was first let to contract, and is that which is here referred to. The former portion was afterwards contracted for by the same person; but he having declined to go on with his work under the second contract, the board have determined again to call Mr. Duncan Grant into the service of the company, and to have it rebuilt with all expedition by a force employed under him.

When the freshet of May 1857 occurred, and the board were considering plans of repair at Lynchburg, the expediency of building a dam across the river from the north abutment of the water-works dam to the Amherst shore, was strongly urged by the superintendent of repairs on that division.

These views were at first concurred in by the chief engineer, but afterwards, for reasons stated in a well considered report, he recommended a less expensive plan, which was adopted by the board. The work then determined upon has never been fully executed, though the board have long been aware that prudence dictated its speedy completion. Since the relief afforded by the legislature last winter, the board have taken up the original suggestions of a dam across the river; and being satisfied that it is the most safe and desirable improvement they could adopt at that important point, they have entered into a contract with Mr. Charles Scott, whose known skill, energy, and ample means, afford a guarantee that the work will be completed in the shortest practicable time.

The last dam on the North River improvement has been complete, and the contractor's forces are now engaged on the tow-path in sight of the bridge at Lexington. It is presumed that the final estimate on this work will be returned before the first of January. Some assessments of damages remain to be made, but measures have been taken to have them determined according to the provisions of the Code.

The receipts and disbursements on account of the canal have been as follows:

RECEIPTS.

From tolls	$225,554 79
From lock tolls	3,415 29
From rents	9,734 73
From penalties	286 46
	$238,991 27

DISBURSEMENTS.

Expenses and Repairs:		
Five locks	$26 51	
First division	72,722 80	
Second division	15,922 56	
Salaries of Agents:		
Five locks	549 98	
First division	22,199 73	
Second division	6,750 00	

General Administration:

Salaries of officers	7,313 32	
Pay and mileage of directors	1,462 75	
Expenses of meetings of stockholders, legal expenses, printing, etc	6,115 20	
Construction:		
Lynchburg feeder canal	2,825 34	
Third division	1,573 14	
Fourth division	637 70	138,099 03
Net income		$100,892 24

On the South side connections, the receipts have been $425; the disbursements, for insurance, $450; for superstructure of the New Canton Bridge, $1,559.43.

On the Blue Ridge turnpike road and ferry, receipts $217.-27; disbursements $755.26.

On the Rivanna connections, disbursements for sections, $270.60; for damages, $1,780.92.

On the North River improvement:

Receipts:

Tolls at the Jordan's Point Bridge	$ 450.00

Disbursements:

Expenses and repairs	1,481.58	
Pay of engineers	3,066.66	
Construction	23,477.31	28,025.55
Excess of disbursements over receipts		$27,575.55

At Bent Creek, a commodious warehouse has been built, for the accommodation of the South side trade. The cost of the building was two thousand dollars, for which sum the bond

of the company has been executed, payable without interest in October 1861.

The legislature at its last session made provision for a subscription of sixty thousand dollars to the stock of the Rivanna Navigation Company to be wholly expended in the extension and completion of that improvement. Upon the application of the Rivanna Company, the chief engineer of this company was allowed to take charge of their work without interference, however, with his duties upon this line. The entire unfinished work was let to contract in July, is in active progress, and may be expected to be completed in twelve months from this time. It is not doubted that the Rivanna improvement will be a valuable tributary to the canal, when the navigation shall be extended to and above Charlottesville.

The report of the agent on the Kanawha turnpike road is submitted, showing satisfactorily the condition of the road and an increase in the receipts at the toll gates of $908.66, compared with the receipts of the previous fiscal year. The total receipts and disbursements were as follows:

Receipts:		
From toll		$8,818.48
Disbursements		
On road account	$6,696.96	
On bridge account	1,832.87	
On agency account	883.32	9,413.15
Excess of disbursements over receipts		$ 594.67

Up to the time of placing this report in the hands of the printer to be printed as usual in advance of the meeting of the stockholders for their use, no statement had been received from the Kanawha board of the state of their finances, subsequent to the first of May. The remaining portion, there-

fore, is necessarily omitted from the secretary's general statement of the receipts and disbursements of the company for the fiscal year.

It will be remembered that the Kanawha board were authorized and directed, by the act of assembly passed March 23, 1860, to prosecute the construction of the Kanawha line of improvement, free from the control or direction of the president and directors of the company; they having been, by previous act, invested with all the authority vested in the then existing board of directors over the Kanawha River. In view of these circumstances, when the board here were making their first quarterly report to the auditor of public accounts, of the number of passengers transported, and the gross amount received for the transportation of freight on the canal, as required by the act passed March the 30, 1860, entitled an act for the assessment of taxes on persons and property, the auditor was referred to the Kanawha board for the required report and payment of tax so far as applicable to the Kanawha portion of the company's improvement. The Kanawha board at first declined to make report or pay the tax, conceiving that the Kanawha River was not included in the provisions of the act. The auditor, however, being advised by the attorney general, called for a report and demanded payment from the company as a corporation aggregate, looking to the president alone as its official organ; and upon this fact being made known to the Kanawha board, they furnished a statement of the gross amount received by them for the transportation of freight on the Kanawha River, and paid the tax thereon out of the funds under their control, but paid it under protest, through the president of the company.

The amount of tax paid by the company under this act, for five months of the fiscal year, was as follows:

Tax at the rate of one mill for every mile of transportation of each passenger transported on the canal		$ 893.01
Tax of one-half of one per centum of the gross amount received by the company for the transportation of freights:		
On the canal	$481.76	
On the Kanawha River	17.92	
		499.68
Total		$1,392.69

The company thus paying this tax, is not to be assessed with any tax on its lands, buildings, boats, or other property which it is authorized by law to hold or have.

Summary statements, prepared by the secretary, are herewith submitted, showing the receipts and disbursements of the company for the year ending September 30, 1860; also the receipts and disbursements from the organization of the company in 1835. A synopsis of the transactions for the part fiscal year will exhibit the following view:*

*The returns from the Kanawha board having been received before the printer's form was distributed, they have been included in the synopsis as now published; so that the balance on the 30th September 1860 appears to be $106,258.02, instead of $86,917.78, as reported to the stockholders.

RECEIPTS.

From revenue:		
Dock	$ 50,128 03	
Canal	238,991 27	
South side connections	425 00	
Blue Ridge turnpike and ferry	217 27	
North river bridge	450 00	
Kanawha road	8,818 48	
Kanawha river	9,864 28	
		$308,894 33
From interest	$2,587 84	
From amounts refunded	1,078 76	
From property sold	4,500 00	
From state loan, for interest	132,429 30	
From original capital stock	43 60	
From new capital stock	7,400,000 00	
From state release	360,214 44	
From state loan, for Kanawha river	40,000 00	
		7,940,853 94
		$8,249,748 27

Sum on hand 1st October, 1859		20,286 98
		$8,270,035 25

DISBURSEMENTS.

Dock		$7,721 52
Tide water connection		842 07
Canal		138,099 03
South side connections		2,009 43
Rivanna connection		2,051 52
Blue Ridge turnpike and ferry		755 26
North river improvement		28,025 55
Kanawha road		9,413 15
Kanawha river		2,116 24
Kanawha river improvement		28,407 80
		$219,441 57
Interest:		
On bonds and notes	$39,067 42	
On bond to the state	1,280 00	
On guaranteed bonds	132,579 30	
On North river bonds	13,200 17	
		186,126 89
State tax		1,374 77
Bills payable		196,619 56

State of Virginia:			
Debt	$5,790,214 29		
Interest	1,301,500 15		
Annuity	118,500 00		
Principal of annuity	350,000 00		
		7,560,214 44	
			8,163,777 23
Balance 30th September, 1860			$106,258 02
Held thus:			
In the Bank of Virginia at Richmond, after deducting warrants afloat		$4,445 78	
In the branch of the Bank of Virginia at Charleston		6,178 40	
Due by the collector on the Richmond dock		11,528 80	
Due by the toll gather at Richmond		4,133 64	
Due by the toll gather at Lynchburg		604 53	
Due by the toll gather at Buchanan		129 95	
Due by the agent on the Kanawha road, after deducting amount due to former agent		472 69	
Due by the collector at Charlston on the Kanawha river*		11,269 83	
Bills receivable		4,976 95	
State stock as per certificate No. 434		42,100 00	
State stock in the hands of the Kanawha board		20,000 00	
Cash in the hands of the Kanawha board		417 45	
			$106,258 02

The amount of bills payable outstanding on the 30th September was as follows:

Negotiable notes		$64,366 99
Bent Creek lumber house bond		2,000 00
Lynchburg level bonds		6,000 00
Third division bonds		23,694 86
Eight per cent. bonds		57,500 00
Total		$153,561 85

Thus maturing:

Bonds past due (of this amount, the company has been enjoined from paying $12,788.69)	$22,694 86	
Payable in the last quarter of 1860	50,700 00	
In the first quarter of 1861	8,375 35	
In the third quarter of 1861	60,596 44	
In the fourth quarter of 1861	2,000 00	
In the year 1862	3,195 20	
In the year 1863	6,000 00	
		$153,561 85

*As to the balance appearing due by the collector at Charleston, Kanawha:

The whole of this amount is reported by him as "tolls in arrear," but stands charged on the books of the company as cash in his hands.

This does not include the bonds of the North River Navigation Company, the payment of which was assumed by the James River and Kanawha Company under the agreement entered into for the transfer of the franchises of the North River Navigation Company, confirmed by an act of the general assembly passed March 16, 1858. The amount issued was $200,000; of which amount $1,000 has been redeemed, leaving outstanding, $199,000.00

Payable as follows:

1st July 1861	$ 2,600.00	
1st January 1862	2,000.00	
1st July 1862	2,325.00	
1st January 1863	2,000.00	
1st July 1863	2.000.00	
1st July 1866	134,075.00	
1st July 1872	54,000.00	
		$199,000.00

The trustee appointed under the original agreements providing for the guarantee, holds $42,122 of these bonds, purchased by him on account of the sinking fund, so that there remain $156,878 yet to be redeemed.

Of the six per cent. registered stock of the commonwealth, issued to the company in purchase of two thousand shares of capital stock, and applicable to the extinguishment of an equal amount of the floating debt, under the act of March 23, 1860, there remained on hand on the 30th September, forty-two thousand one hundred dollars.

No bonds have been issued, and no mortgage or deed of trust given, for the purpose of borrowing money to be applied to the completion of the canal to Covington and other works of the company, and the payment of the residue of the float-

ing debt, as authorized by the act of the 23d March, 1860. The board deemed this course obviously proper in view of the negotiations which were for some time pending with Messrs. Bellot des Minieres, Brothers & Company, and which resulted the project of agreement first signed on the 25th July.

The board of public works being required by the act passed March 23d. 1860, to deliver to this company a statement of the number, amount and date of each guaranteed bond of the company canceled by them, it appears that the amount surrendered and canceled up to the 30th September, has been, of the issued:

Under the act 23d March, 1839	$ 874,775.00
Under the act 9th March, 1849	293,900.00
Under the act 12th March, 1849	135,500.00
Under the act 15th March, 1850	360,000.00
Total	$1,664,175.00

Leaving five hundred and ninety-five thousand eight hundred and twenty-five dollars outstanding. The bonds not yet surrendered, may be converted, as the others have been, into six per cent. registered stock of the commonwealth of Virginia, at the pleasure of the holders thereof, upon application at the office of the board of public works.

No report has been received during the year from the agent for the collection of the Hamilton debt.

In reply to the request of the stockholders adopted at their meeting in August, that the Governor would call an extra session of the legislature for the purpose of considering the agreement authorized by them to be entered into with Messrs. Bellot des Minieres, Brothers & Company, the board are informed that he will convene the legislature for that purpose on the 14th of January next. A copy of his letter is herewith communicated. The agreement in question was duly signed

and sealed on the first day of September, and the requisite acknowledgments and certificates for use in France having been subsequently obtained, Mr. Ernest de Bellot des Minieres left this city on the fifth of September and departed from New York by steamer on the twelfth, taking a duplicate of the agreement with him.

On this subject the board have but little additional information to communicate. Advices are daily expected from France. Since your called meeting in August, the French consul has received another dispatch from the minister of foreign affairs of his Government, recommending the scheme of Messrs. Bellot des Minieres, Brothers & Company to his care and requesting him to lend to them all the moral support which may seem to him to comport with their design. In Virginia, the indications of public sentiment are at once decided, and singularly unanimous, in support of the scheme. The prospect of the immediate completion of the canal, through the agency of the proposed Virginia Canal Company, appears to be everywhere received with satisfaction. A brilliant future for Virginia is generally anticipated, from the development of the mineral, agricultural, manufacturing and commercial resources which the completion of the canal would bring about; and this, too, not only without adding to the burdens of the state, but with immediate actual relief to the public finances, and all the material advantages which would result from the expenditure of so large an amount of foreign capital as would be required, to say nothing of the demand for labor, provisions and supplies necessarily incident to such an undertaking. The subject indeed seems to have expanded into national interest, since many of the most intelligent and influential journals of the country have noticed it, with expressions of pleasure, if friendly to the end proposed, or of detraction, if influenced by a spirit of rivalry. In short, no one doubts that the speedy completion of the James River and Kanawha Canal, upon an enlarged and improved plan, is

of immeasurable importance to the power and prosperity, not of Virginia only, but of the whole South.

The board of directors naturally feel a peculiar interest in the success of this undertaking. Their earnest hope and constant effort will be for the accomplishment of an event which they deem worthy of our state and country.

All which is respectfully submitted.

THOMAS H. ELLIS, *Pres.*

Stockholders J. R. & K. Co.

No.

Table Showing the

Quantities of the Principal Articles entered and cleared in
points on James River, during

Inward Trade Articles.	Year ending September 30, 1855.	Year ending September 30, 1856.	Ye Septem
Coal	13,000 tons	13,764 tons	18
Coffee	5,035 bags	7,900 bags	15
Fish	21,216 barrels	20,238 barrels	27
Guano	15,220 tons	16,639 tons	18
Hay	13,793 bales	19,955 bales	38
Ice	2,484 tons	2,137 tons	2
Iron, pig and scrap	3,304 tons	2,722 tons	2
Lime	18,596 casks	36,635 casks	32
Lumber*	4,868,383 feet	4,951,000 feet	5,816
Molasses	4,000 barrels	3,335 barrels	2
Oats	13,845 bushels	60,706 bushels	25
Oyster shells	53,000 bushels	23,043 bushels	38
Plaster	8,625 tons	6,218 tons	5
Salt	52,500 sacks	59,747 sacks	57
Shingles	2,029,338	1,805,950	1,144
Sugar	3,202 hhds.	3,485 hhds.	2
Tar and rosin	1,650 barrels	956 barrels	1
Wheat*	149,391 bushels	314,456 bushels	207

* The river trade in wheat

No. 2

Table Showing the Trade of the Dock

ntities of the Principal Articles entered and cleared in the Richmond Dock, exclusive of the Trade to and from points on James River, during the several periods specified.

d Trade Articles.	Year ending September 30, 1855.	Year ending September 30, 1856.	Year ending September 30, 1857.	Year ending September 30, 1858.	Year ending September 30, 1859.	Year ending September 30, 1860.
.....	13,000 tons	13,764 tons	18,887 tons	18,500 tons	15,062 tons	29,897 tons
.....	5,035 bags	7,900 bags	15,073 bags	20,479 bags	33,137 bags	24,408 bags
.....	21,216 barrels	20,238 barrels	27,796 barrels	23,702 barrels	16,404 barrels	25,470 barrels
.....	15,220 tons	16,639 tons	18,024 tons	15,568 tons	17,223 tons	22,778 tons
.....	13,793 bales	19,955 bales	38,268 bales	28,117 bales	20,220 bales	29,813 bales
.....	2,484 tons	2,137 tons	2,825 tons	9,227 tons	9,139 tons	6,645 tons
pig and scrap.....	3,304 tons	2,722 tons	2,732 tons	4,372 tons	6,051 tons	13,333 tons
.....	18,596 casks	36,635 casks	32,195 casks	35,570 casks	28,349 casks	48,491 casks
er*.....	4,868,383 feet	4,951,000 feet	5,816,781 feet	6,941,423 feet	27,539,423 feet	25,600,576 feet
ses.....	4,000 barrels	3,335 barrels	2,241 barrels	8,459 barrels	8,905 barrels	7,672 barrels
.....	13,845 bushels	60,706 bushels	25,463 bushels	10,058 bushels	26,032 bushels	27,035 bushels
shells.....	53,000 bushels	23,043 bushels	38,265 bushels	17,308 bushels	6,050 bushels	33,512 bushels
.....	8,625 tons	6,218 tons	5,190 tons	6,435 tons	5,832 tons	8,149 tons
.....	52,500 sacks	59,747 sacks	57,182 sacks	47,154 sacks	25,729 sacks	73,177 sacks
es.....	2,029,338	1,805,950	1,144,400	1,251,955	3,037,485	3,116,600
.....	3,202 hhds.	3,485 hhds.	2,693 hhds.	3,298 hhds.	2,810 hhds.	1,959 hhds.
d rosin.....	1,650 barrels	956 barrels	1,623 barrels	1,729 barrels	1,604 barrels	2,053 barrels
*.....	149,391 bushels	314,456 bushels	207,026 bushels	483,404 bushels	317,806 bushels	360,918 bushels

* The river trade in wheat and lumber is included.

Outward Trade Articles.	Year ending September 30, 1855.	Year ending September 30, 1856.
Coal	275 tons	None
Copper ore	708 tons	930 tons
Domestics	1,644 bales	3,265 bales
Flour	335,917 barrels	410,000 barrels
Feed	345,530 bushels	365,840 bushels
Iron-spikes, &c	2,300 tons	4,005 tons
Nails	11,950 kegs	14,434 kegs
Tobacco	78,600 packages	89,269 packages
Tobacco	23,857 hhds.	24,404 hhds.
Tobacco	387 tierces	297 tierces
Wheat	57,520 bushels	185,288 bushels
Assorted Cargoes.		
New York packets	60	80
Baltimore packets	40	50
Boston packets	29	41
Boats and Vessels		
Entered the dock	1,217	1,359
Left the dock	1,337	1,622

	Year ending September 30, 1857.	Year ending September 30, 1858.	Year ending September 30, 1859.	Year ending September 30, 1860.
	5,263 tons	1,234 tons	1,366 tons	972 tons
	603 tons	264 tons	738 tons	739 tons
	2,504 bales	1,603 bales	2,107 bales	1,708 bales
s	429,299 barrels	525,344 barrels	389,635 barrels	423,194 barrels
s	278,984 bushels	600,880 bushels	394,449 bushels	380,763 bushels
	3,859 tons	1,555 tons	2,527 tons	2,586 tons
	13,536 kegs	14,583 kegs	18,924 kegs	10,016 kegs
ges	90,013 packages	52,069 packages	54,977 packages	56,367 packages
	23,416 hhds.	30,547 hhds.	30,308 hhds.	20,434 hhds.
	240 tierces	576 tierces	576 tierces	1,117 tierces
ls	83,177 bushels	137,964 bushels	102,309 bushels	143,000 bushels
	62	65	58	56
	31	79	110	75
	40	46	37	39
	1,395	1,752	2,062	2,123
	1,549	1,891	2,273	2,337

No. 3.

Richmond, October 20, 1860.

Gentlemen:

I ask leave to present the following report of the condition and progress of the work under my charge during the past year:

The increasing trade of the Richmond dock demands that the wharf on the south side of the dock should be extended down to the ship lock; and the improvements made by the city in the grading and paving of Water Street, renders it also necessary to continue the raising of the wharves and sheds on the north side, as far down as the lower slip. I strongly recommend and hope that these improvements will be made during the following year.

The pivot bridge over the dock at 17th street will be completed in a few days. The north abutment of the old bridge was taken down and a new abutment erected 10 feet inside of the old one, and a pier 17 feet long and 10 feet wide was built between the two abutments, leaving an opening of 31 feet for the passage of vessels. The bridge consists of two iron girders 31½ feet long, two feet wide, and ⅜ths of an inch thick, extending from the pier to each abutment. These girders are from the factory of Messrs. Abbott & Son of Baltimore, and are, I believe, the longest that have ever been rolled in one entire piece in this country. The castings and other iron work were furnished in this city; and the bridge was put together and erected by Messrs. Turner & Brother, under the

superintending of Mr. Joseph Heindl, the contractor. The cost of changing the abutment and building the pier was $1,633.50. The cost of the superstructure will be $3,250. Vessels drawing less than seven feet water can now pass into the upper dock, and thereby afford more room for larger vessels in the lower dock.

A handsome iron bridge, just above the Danville depot, and a substantial stone arch in the line of 13th street, have been constructed over the tide water canal by Messrs. Haxall, Crenshaw & Co. They propose the additional improvement of a stone wall on the southern margin of the canal, between the two bridges. These structures add very much to the general good appearance of the canal and of that part of the city.

Bosher's Dam is very nearly completed. About 815 feet in length of the dam is finished. There remain now to be built up, only the five sluices which were left for the passage of the water during the construction of the dam. High water may prevent this being done this year, but every exertion will be made to bring the whole to a close by the first of next January. The total cost of this dam, so far, has been about $51,000. The estimated cost of completion is $10,000.

Joshua Falls Dam remains, I regret to say, very nearly in the same condition as it was this time last year. For the want of the adequate means, the contractor did not resume work on this dam before August last. He commenced then with a small force, and will probably build the southern section of the dam—which is about 200 feet in length—up to ordinary low water, and can finish this part of the dam in the early part of next summer. The same contractor also entered into a contract to rebuild the northern section of the dam, but from some misapprehension in regard to the terms of the contract, he has declined its execution. The company must therefore take some other steps to insure the speedy completion of this dam; and I would recommend that they employ a competent force and have the work done under the super-

intendence of Mr. Grant. Every exertion should be made to have it completed next year.

A contract has been entered into with Mr. Charles Scott, to construct a new dam across the north arm of the river at Lynchburg, which will be an extension of the water-works dam to the northern shore. The work has been commenced, and the contract requires that it shall be completed by the first day of January 1862. This dam is intended to supersede the embankment on Daniel's Island and the three small dams connecting Daniel's, Jones' and Pettyjohns' Islands with the northern shore of the river.

After the disastrous freshet of 1857, the board became painfully alive to the great insecurity of the guard bank on Daniel's Island. It has suffered two tremendous breaches from the freshets of 1847 and 1857, which were repaired at an expense of about $15,000, and involved the company in the loss of a much greater amount from the suspension of navigation, besides causing great inconvenience and loss to the citizens of Lynchburg, from the cutting off the supply of water for domestic and manufacturing uses. The policy of building a continuous dam across the river was then strongly recommended to the board, as a substitute for the plan that had been adopted for the raising of the Lynchburg level; but the board, while they conceded the importance and superiority of the plan of a continuous dam, decided to adhere to their original plan of raising the old dams and the guard bank, as it was much the cheaper, and better adapted to the then crippled state of the company's affairs. The original plan had been executed only so far as to raise the three small dams—the waterworks dam and the guard bank being yet untouched—when the company was relieved from its pressing embarrassments; and the board then decided to abandon the first plan, and carry out the more desirable and permanent one, of a continuous dam across the river.

When we consider the magnitude of the interests, both of the company and of the city, which are involved in the stabi-

lity of the works at Lynchburg, it must be conceded that the board have acted wisely in thus placing them in a state of the utmost security and permanency.

The North River improvement is completed, with the exception of about half a mile of tow-path above dam No. 1, and the walling around the basin at Lexington, which will be completed by the end of the year.

The total amount of money which has been expended by the James River and Kanawha Company for the execution of work on the North River improvement, thus far, is $80,716. The estimated cost of completing the work, including the cost of basin and gauge dock, is $10,000.

The reports of the superintendents of repairs will show the present condition of the canal and the repairs that have been made during the year.

The present condition of the canal is better than it was during the previous year, though it is still far from being in a perfect state of repair.

The bars in the ponds, especially the one in the Judith pond, continue to be serious obstacles to the perfect navigation of the canal.

The steam dredging machine which was purchased for the removal of those bars, unfortunately proved to be too large to pass through some of the locks. It was ordered to be fourteen feet wide, which was thought to be narrow enough, and was made according to order; but being square on the sides, and drawing more water than was supposed, it hung in the curves of the old locks below the water line, and could not be made to pass through them without the great delay and inconvenience of unloading at each of those locks. Being thus incapacitated for the uses for which it was intended, it was thought best to work it as the tail of the ship lock and in the dock, where it can be economically and permanently employed. But as the necessity still exists for employing one of these machines on the second division, I recommend that another one be ordered of rather lighter construction and different

shape in the hull. The one now in use works well, and I am satisfied of the economy and necessity of working these machines at various points on the line.

In view of the probability (I may say certainty) of the speedy extension of the canal above Buchanan, whether under the present or a different organization, it is my duty to call your attention to the fact, that although the third division has been definitely located and surveyed for condemnation, yet such a long time has elapsed since the field work was done, that the most of the stakes have been removed and the land marks obliterated; and it will be necessary, before the work can be offered for contract and the land damages assessed, that the location shall be retraced and the land marks restored; and for that purpose a corps of engineers should be placed in the field at least sixty days before the contemplated letting of the work. I bring this matter to your notice, that you may take such steps as you may think proper, in order to prevent any unnecessary delay in the prosecution of the work.

Respectfully submitted,

E. LORRAINE,

Chief Engineer.

To the President and Directors J. R. & K. Co.

No. 4.

Richmond, October 1st, 1860.

Sir:

I respectfully refer you to the following report, for the necessary information relative to the repairs made under my supervision, on the dock, the five locks, and on the first division of the canal, during the last fiscal year, together with such other information in connection with the improvement as may be worth communicating:

The line was favored by the elements during the year; there were no breaches, and no bad leaks to interfere with the running of boats; and there was no interruption by high water or by low water, except on the 4th level of the canal, where boats were sometimes detained when the water was low in Bosher's pond. The canal was frozen over and navigation suspended from the first to the thirteenth of January, and again on the third, fourth and fifth days of February.

The navigation was suspended in part from the first to the fifteenth of July, to make repairs to certain works of art, which could not be done with the line open to trade. Such a course has been pursued at the same period every summer, commencing in 1850, because there is less trade and travel then than at any other season, except in January, when the weather is unsuitable, and the forces generally not organized in time.

The number of master mechanics and overseers allowed by the board of directors, less one, were retained in service. But in consequence of the wages of the white labor, and the hires

of the slaves not having been paid when due, there was considerable difficulty experienced in keeping up an organization on the line. The masons, quarrymen, blacksmith, and one carpenter (all under the charge of the master mason) quit work on the first of November, and did not resume their places again until the middle of April. Some of the other carpenters also quit from time to time. The force of slave labor, authorized to be hired on the first of January, was not secured in full, and, in fact, the complement of hands for each of the old squads were not all hired until within the last few weeks.

One small additional squad under the charge of a foreman mason, was organized between the middle of April and the last of August. Another additional squad, authorized to be made up, was not attempted, in consequence of the difficulty of procuring labor. With these difficulties to contend with in the hiring of hands, it will be perceived that I can only report an average of the labor worked; which I will endeavor to make approximate as near as possible to what is right.

The force consisted of 1 master mason, 2 master carpenters, 4 overseers, 1 supply agent, 3 stone masons, 13 carpenters, 8 quarrymen, 3 blacksmiths, 8 boatmen, 8 cooks and 38 common laborers, making a total of 89—of whom 18 were white men, 1 a free man of color, and 70 slaves hired by the year.

The force, under the head of masonry, quarried and shipped to different points on the line about five hundred cubic yards of granite; built three new bridge abutments; built new sustaining walls to locks Nos. 21 and 29, and repaired the masonry behind the chambers of those and other composite locks. They have, besides, cut stone for new sustaining walls at lock No. 32, and for two new bridge abutments.

The carpenters built 4 new capstans at the ship lock for opening the gates, and made some repairs about the lock and dock. They put up new superstructures at the bridges over the Tide water connection, on 10th, 11th and 12th streets, and repaired the lock gates and foot bridges on the said connection. They put up a new superstructure at the bridge on

7th street in this city; framed and put in 38 lock gates; constructed 1 new dredge boat and 3 lighters; put new superstructures at 3 tow-path bridges; framed 2 new kitchens; put in new wood work entire in the outlet lock leading to Reins' Island; put on new cap sills, and made other necessary repairs to the chambers and upper wings of 14 other composite locks; made repairs to 21 old lock gates, and 11 farm bridges; repaired 3 lock houses, 2 rock boats, 4 house boats, 7 lighters; put in trunks and apertures for supplying water power at 2 mills, and made repairs to Seven Island and Joshua Falls Dams.

The four squads of common labor were employed in assisting the mechanics on the repairs of the locks, opening ditches, clearing the vegetable growth from the banks. All the rest of the time they could be spared from other necessary work, they were employed dredging the mud from the bottom of the canal, using it for raising and dressing the face of the tow-path, it having proved to be the very best material that can be used for such a purpose. It combines as much sand as is necessary to make a dry and solid track for teams, and is at the same time much less liable to abrasions, when put on the face of the banks, than any other material.

The supplying of rations, oil, provender, etc., on company account, by the use of its own boat, under charge of its own agent, was carried on very satisfactorily, and on much better terms than it could have been done by contract—the average cost of the rations, all expenses included, being $1 each, and the oil 75 cents per gallon.

Respectfully submitted,

E. L. CHINN,

Supt. of Repairs.

Col. Thomas H. Ellis, Pres. J. R. & K. Co.

No. 5.

Holcomb's Rock, October 5, 1860.

Sir:

The fiscal year having closed, I again lay before you my report of the condition of that portion of your improvement under my supervision, the operations of the force, and such other information that I deem of any interest to be reported.

The condition of the canal at the present time is perhaps as good as it has been at any time heretofore since its construction, especially when taken as a whole. The embankments in many places have been strengthened and riprapped; all the stone dams have been filled in behind with stone; a large number of new lock gates have been constructed and put in during the year; and but for the sand bars, which have been accumulating at the mouths of streams emptying into the different pools ever since the dams were built, I should be enabled to say that the second division was in much better condition than it ever has been heretofore. No breach having occurred on this division during the year, shows conclusively that the banks are becoming more and more permanent every year.

There has been no cessation to the navigation during the year between Lynchburg and Buchanan, except a few days in January, occasioned by ice. There was fifteen days' suspension between Lynchburg and the combined locks at the head of Joshua Falls Pond, occasioned by drawing off the Lynchburg level to do necessary repairs about the water works guard lock. In the month of July there were some obstructions to the navigation on the second division, and

also on the North River Canal. On the second division, it was caused by extreme low water in the river, and by the leaky condition of the Blue Ridge Dam, which rendered the water too shallow at the sand bars to pass boats fully laden. This, however, was but of short duration, as the depth of water was increased as soon as our machines could do it.

On the North River Canal, the leaky condition of several of the dams, and especially the one near Edmundson's mills, was cause of some interruption to the navigation. The back of this dam was badly sheeted, and has been in a leaky condition ever since its construction.

It became necessary to draw the water off of this dam, put in new draw gates, and new sheeting, where necessary, and gravel behind the dam. This occupied about ten days; after which there was no obstruction to the navigation. The only breach which occurred during the year was on the North River Canal, which happened on the 4th of December last, near Wm. W. Major's mill. It was mended in six days, by the assistance of two squads of hands, from the second division, and caused a suspension of the navigation for three days.

Owing to the embarrassed condition of the company on the 1st of January, I was unable to procure the number of hands authorized to be hired for this division and the North River improvement. Instead of 54 hands, authorized to be hired, I could only procure 44 by the 1st of March. Three others have been hired since, one on the 1st of June, and two others from the 1st and 12th of September to the end of the year. This force was lessened by two deaths. One was a man belonging to George H. Damron as guardian, who died March 22d, with typhoid fever. The other was a man named Jonas, belonging to Robert Ridgeway, Sr., who was accidentally drowned at lock No. 18, on the 19th of May—leaving the force to consist, on 19th of May, of 4 black and 4 white carpenters, 2 smiths, and 36 common laborers. Four of these laborers were consigned to the North River improvement, and

the remainder distributed to the best advantage on the second division.

The carpenters' force on the second division, were 4 black and 3 white carpenters, a cook and a boy. This force did the following work for the quarter ending 31st of December, 1859, viz: Built new windlass frame at head of Joshua Falls Pond; put on new balance beam at combined locks; put in new wicket, at lock No. 47; put new roadway beams under Sackett's Bridge; put in new head gates at lock No. 7; new tail gates at guard lock No. 2; new tail gates at lock No. 8; new tail gates at lock No. 9; made and put in trunk on North River Canal, to supply Messrs. Jordan, Winn & Co. with water power; built 3 new change bridges across lock; made new railroad to draw out boats; made on new skiff, 24 new wheelbarrows, and repaired 20 old ones, put necessary lining on lock gates, and repaired bridges, from the head of Joshua Falls Pond to Wasp Rock Dam, and put in a new rack at the cement mills.

They did the following work during the quarter ending 31st of March, 1860, viz: Pulled out and repaired house boat No. 3; repaired 2 mud flats; pulled out and repaired one mud machine; built one new flat for mud machine; made 30 wheelbarrows, and repaired 25 old ones; made and put in three trunks on the Lynchburg level, to furnish water power to A. G. Dabney, Messrs. Langhorn & Morris, and George S. Duiguid; spliced one heel post at lock No. 51; made a full set of lock gates for lock No. 3, and head gates for lock No. 4, on the North River Canal, and pulled out and repaired house boat for Thomas Oney. The charges for timber, iron and labor furnished from second division, on account of construction North River Canal, amount to $1,229.

They did the following work during the quarter ending 30th June, viz: Pulled out and repaired boat Waterwitch; put in new head gates at guard lock at Pedlar Dam; put new head gates in guard lock at Judith's Dam; new head gates in guard lock at water works dam; put in a crib below the

abutment of Dolan's Dam, 50 feet long, 10 feet wide, and 7 feet high; a crib at the north end of said dam, 19 feet long, 8 feet wide, and 6 feet high; built 57 panels of fencing around garden lot at lock No. 21; built new waste gates at Weir River lock No. 5; made a screw pump 16 feet long, and 16 inches in diameter; made 30 wheelbarrows, painted carpenters' house boat, and repaired several horse carts.

They did the following work during the quarter ending 30th September, viz: Built about 300 feet in length of coffer dams above and below the water works guard lock, for the purpose of putting in foundation of sustaining wall, which was undermined, and had given way; put in a timber foundation below the feeder at Lynchburg, 50 feet long, by 35 feet wide, and planked over the same; spliced heel post at lock No. 48; made and put in tank at lock No. 3, for Robert G. Scott to take water from the canal; repaired 4 flat boats; built a farm bridge on Tyree's farm; repaired Beaver Creek Aqueduct; repaired one mud machine; built a crib across the mouth of Reed Creek, 50 feet long, 10 feet wide and 6 feet high; put in head gates at lock No. 49, tail gates at lock No. 10, and head gates at lock No. 3; put in head gates at guard lock at Big Island Dam, and head gates in guard lock at Coleman's Falls Dam.

The force of common laborers was organized as heretofore, into three squads, each with 10 men and an overseer. This force, when not engaged in dredging the canal and attending to the ordinary repairs, have been engaged in raising the towing path and protecting it with riprap at such points along the line as most needed it.

About the 1st July it became necessary to concentrate the whole force at the water works dam, in order to take down and rebuild speedily one of the retaining walls of the feeder at Lynchburg. The wall on the south side of the guard lock had been undermined by the action of the water passing through the wicket next to the wall, and was likely to fall down and cause great injury to the guard lock. This was a

very expensive piece of work to the company, on account of the great amount of coffer damming necessary to be built before the masonry could be commenced. The pumping was also a very expensive item in this job, as it had to be kept up night and day, in order to enable the foreman mason to found the wall on solid rock. This was effected 8 feet below the foundation of the guard lock, which rests upon timbers. This work was done in a substantial manner by the foreman mason, Philip Powers. An apron was extended 50 feet below the gates of the feeder; which will prevent any further undermining of the sustaining wall which gave way.

North River Improvement

The force employed to keep this improvement in repair, was one foreman carpenter (who acted in the capacity of overseer), one carpenter employed constantly, two white men employed a part of the year as rough carpenters or laborers, as the exigency of the work required, and four negro laborers. I am gratified to have it in my power to say that this force, though small, has, under the energetic supervision of the foreman carpenter, kept this improvement in good condition, and performed a large amount of work properly chargeable to construction account, as the following exhibit will show:

During the first quarter, ending 31st December, 1859, they did the following work, viz: Built lock house at lock No. 13; straightened canal bank at lock No. 12; mended the breach at Major's Mill, with assistance of two squads from second division; boated stone, and riprapped banks at same breach; cut and hewed the timber for bridge at William W. Major's Mill; and built a kitchen at lock house No. 10.

During the second quarter, ending 31st March, rebuilt flat for William W. Major, which had been damaged by breach

in canal; built the bridge across canal at Major's Mill, 125 feet long (dispensing with abutments); made 8 wheelbarrows; pumped out water at lock No. 4, and put in a full set of lock gates, two hollow quoins six feet long, of heart pine, and framed and put up bridge No. 3.

During the third quarter, ending 30th June, cut and hewed the timber in the woods for the lock gates of locks Nos. 14 and 16; framed one pair of same, and put bridge across lock No. 4; hand railed bridge at John W. Hamilton's; put in lock gates at lock No. 3; widened the tow-path on pond No. 3, and built new foot bridge over the canal at Mrs. Miller's.

During the fourth quarter, ending 30th September, they did the following work, viz: Drew off the water at dam No. 9, and cleaned out lock No. 16; graveled, in part, dams Nos. 3, 4, 5, 6, 8, 9 and 10; put in two new gates at lock No. 14; two new gates at lock No. 16; made four new draw gates, and did other repairs to dam No. 6; made two new gates for waste weir at Edmundson's mill; cut and hewed stringers for four farm bridges on the land of Wm. W. Major; built road bridge over the canal at Edmundson's mill; framed lock gates at lock No. 1 (Reid's Dam); blasted off ledge of rock above lock No. 6, to give better entrance to the lock; besides which they did many other repairs, such as ditching, graveling the banks, etc.

The work necessary to be done on this improvement during the next fiscal year will be as follows, viz: Two lock houses to be built—one at lock No. 3, and the other at lock No. 11; lock gardens to enclose at locks Nos. 3, 8, 10, 13, 16 and 19; a carpenter's shop, lumber shed and stable to be built at lock No. 10; some lock gates perhaps to be put in; tow-path to be made around pond No. 5; five farm and road bridges to be replaced; two ferry flats to be built—besides the necessary repairs to the following works of art, viz: 10 dams across North River, 23 locks, 12 lock houses, 12 farm and road bridges, 10 change bridges, 5 aqueducts and 4 ferries to be kept up.

The work which will be necessary and indispensable to be done on the second division, as far as I can now ascertain, is as follows, viz: About 24 new sets of lock gates to put in; 3 or 4 farm and road bridges to be constructed anew; a large lumber shed to be erected for the preservation of timber at Pedlar dam; a toll house and a shed over the gauge dock at Lynchburg; a substantial waste weir of masonry, 100 feet in length, on the Lynchburg level, for the escape of the surface water on this level when the machinery is not in motion—together with the usual repairs to be kept up, consisting in part of the following important works of art, viz: 15 dams, including three wooden dams between the islands above Lynchburg, 43 locks, 42 lock and toll houses, 3 aqueducts, 10 road and farm bridges, 15 tow-paths and 24 change bridges over locks, 2 rope ferries to keep up—besides a large number of culverts, waste weirs and over-drains—all of which occasionally need some repairs.

The laboring force (to place it on the most economic footing) should be adequate to keep the canal in good navigable condition, and do such extra work where it is needed to place the canal, if possible, beyond the contingency of being seriously damaged by high tides in the river. I would therefore recommend to the company that the laboring force on this division should consist of at least 3 squads, and each squad to consist of 13 men and an overseer—two of the squads to have as at present, each a common dredging machine—and the other to have charge of a steam dredger. This force, with the present force of carpenters—augmented if exigencies require it—can, I think, if worked properly, keep the canal in good navigable condition, and also protect every point on the canal where there is any likelihood of the banks being damaged by a high tide.

I recommend that the laboring force on the North River improvement for the next fiscal year, be increased to 9 laborers and 1 cook, and that the carpenters' force remain the same as at present constituted.

Raising the Lynchburg Level

Nothing has been done to this work since my last annual report, with the exception of the raising of the tow-path to its required height, between Sacket's Bridge and the Blackwater Aqueduct.

The feeder canal was brought into use, by the action of the common council of Lynchburg, about the 1st of July, and answers well the purpose for which it was intended.

As your law agent, I have nothing to report adverse to the interest of the company. I trust that the action taken by the board, at their late meeting in Lynchburg, in reference to the suits pending in the courts of Amherst and Nelson, may lead to their speedy and satisfactory termination.

Though I have not all the data to estimate the liabilities incurred on account of expenses and repairs for this division during the last fiscal year, yet I have enough, I think, to warrant me in saying that they will not exceed per mile those of the previous year.

All which is respectfully submitted by

Your obedient servant,

JAMES M. HARRIS,

Sup. Rep. 2d Div & N. R. Improvement.

Col. Thomas H. Ellis, Pres. J. R. & K. Co.

TABLE NO. 1.—*Showing the Quantities and Probable Value of All Articles conveyed on the Canal of the James River and Kanawha Company, which were cleared at the Toll Gatherer's Office in Richmond during the Fiscal Year ending 30th September, 1860, Classified so as to exhibit the Quantities and Probable Value of the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

PRODUCTS	Brought down the Canal		Carried up the Canal		Totals	
	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest	49,581,750	$136,445 00	4,308,562	$19,613 18	53,890,312	$156,058 18
Agriculture	55,371,220	2,820,071 59	4,180,328	146,795 53	59,551,548	2,966,867 12
Mines	127,519,441	148,747 30	31,077,005	97,967 87	158,596,446	246,715 17
Manufactures	9,024,174	98,309 56	9,820,722	299,261 09	18,844,896	397,570 65
Merchandise	157,486	59,598 60	72,477,812	13,106,825 95	72,635,298	13,166,424 55
	241,654,071	$3,263,172 05	121,864,429	$13,670,463 62	363,518,500	$16,933,635 67
Tons of 2,000 lbs.	120,827	.....	60,932.2	.....	181,759.2	.....

R. B. SNEAD, T. G.

Toll Gatherer's Office, Richmond, Oct. 1, 1860.

No. 7

TABLE No. 2.—*Showing the Quantities and Probable Value of All Articles conveyed on the Canal of the James River and Kanawha Company, which were cleared at the Toll Gatherer's Office in Lynchburg during the Fiscal Year ending 30th September, 1860, Classified so as to Exhibit the Quantities and Probable Value of the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

PRODUCTS	Brought down the Canal		Carried up the Canal		Totals	
	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest	30,448,663	$45,801 64	8,599,222	$39,653 68	39,047,885	$85,455 32
Agriculture	40,122,118	1,221,248 89	2,067,485	47,589 06	42,189,603	1,268,837 95
Mines	19,134,779	182,034 03	356,127	1,600 66	19,490,906	183,634 69
Manufactures	11,531,379	926,724 02	300,428	16,108 82	11,831,807	942,832 84
Merchandise	633,453	135,910 28	2,269,773	73,611 83	2,903,226	209,522 11
	101,870,392	$2,511,718 86	13,593,035	$178,564 05	115,463,427	$2,690,282 91
Tons of 2,000 lbs.	50,935.2		6,796.5		57,731.7	

W. HENDERSON, T. G

Toll Gatherer's Office, Lynchburg, Oct. 1, 1860.

TABLE NO. 3.—*Showing the Quantities and Probable Value of All Articles conveyed on the Canal of the James River and Kanawha Company, which were cleared at the Toll Gatherer's Office in Buchanan, during the Fiscal Year ending 30th September, 1860, Classified so as to exhibit the Quantities and Probable Value of the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

	Carried down the Canal		Brought up the Canal		Totals	
PRODUCTS	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest	2,539,948	$9,661 00			2,539,948	$9,661 00
Agriculture	3,134,346	136,198 54			3,134,346	136,198 54
Mines	3,678,755	485 83			3,678,755	485 83
Manufactures	159,666	28,846 25			159,666	28,846 25
Merchandise	52,114	11,147 00			52,114	11,147 00
	9,564,829	$186,338 62			9,564,829	$186,338 62
Tons of 2,000 lbs.	4,782.8				4,782.4	

A. FINNEY, T. G.

Toll Gatherer's Office, Buchanan, Oct. 1, 1860.

TABLE NO. 4.—*Of the Quantities and Probable Value of all the Articles conveyed on the James River and Kanawha Canal during the Fiscal Year ending 30th September, 1860, Classified so as to Exhibit the Products of the Forest, of Agriculture, of Mines, of Manufactures, and of Merchandise generally.*

	Brought down the Canal		Carried up the Canal		Totals	
PRODUCTS	Pounds Weight	Value	Pounds Weight	Value	Pounds Weight	Value
The forest.....	82,570,361	$191,907 64	12,907,784	$59,266 86	95,478,145	$251,174 50
Agriculture.....	98,627,684	4,177,519 02	6,247,813	194,384 59	104,875,497	4,371,903 61
Mines.....	150,332,975	331,267 16	31,433,132	99,568 53	181,766,107	430,835 69
Manufactures.....	20,715,219	1,053,879 83	10,121,150	315,369 91	30,836,369	1,369,249 74
Merchandise.....	843,053	206,655 88	74,747,585	13,180,437 78	75,590,638	13,387,093 66
	353,089,292	$5,961,229 53	135,457,464	$13,849,027 67	488,546,756	$19,810,257 20
Tons of 2,000 lbs.	176,544.6	.....	67,728.7	.....	244,273.3	.....

WM. P. MUNFORD, SEC.

Office James River and Kanawha Co.
Richmond, Oct. 1, 1860.

Statement showing the Quantities of the Principal A

ARTI

Year Ending.	Hhds. Tobacco.	Boxes Manufactured Tobacco.	Hogsheads Stems.	Barrels Flour.	Bushels Wheat.
November 30, 1842 (11 months)	20,800	23,006	805	60,139	167,603
October 31, 1843 (11 months)	18,985	17,158	717	63,886	201,825
October 31, 1844	11,851	33,323	1,053	71,442	281,703
October 31, 1845	15,028	39,717	1,547	79,190	299,982
October 31, 1846	12,220	44,146	1,429	113,890	222,474
October 31, 1847	14,467	60,815	1,598	76,767	242,937
October 31, 1848	9,255	58,873	1,294	91,692	327,483
October 31, 1849	14,046	53,717	1,196	137,315	495,991
October 31, 1850	11,335	64,170	1,463	128,250	490,013
September 30, 1851 (11 months)	7,135	60,673	1,040	95,473	445,747
September 30, 1852	11,999	102,616	1,509	110,231	506,056
September 30, 1853	9,395	11,840	2,456	114,932	682,694
September 30, 1854	11,742	72,224	1,628	109,298	760,849
September 30, 1855	12,876	52,689	1,360	106,881	482,144
September 30, 1856	14,954	43,959	1,755	117,034	687,959
September 30, 1857	10,428	39,931	1,485	94,183	619,065
September 30, 1858	16,285	48,408	1,138	112,969	926,482
September 30, 1859	13,183	57,181	1,378	104,434	723,479
September 30, 1860	15,268	53,076	2,308	78,711	695,388

No. 10

s of the Principal Articles conveyed on the Canal of the James River and Kanawha Company, several periods specified

ARTICLES BROUGHT DOWN THE CANAL																ARTICLES CARRIED UP C						
Hogsheads Stems.	Barrels Flour.	Bushels Wheat.	Bushels Corn.	Bushels Oats.	Tons Pig Iron.	Tons Bar Iron.	Tons Coal.	Tons Stone.	Tons Copper Ore.	Tons Bar and Pig Lead.	Dried Fruit.	Barrels Apples.	Cords Wood.	Sacks Salt.	Tons Plaster.	Tons Coal.	Tons Castings.	Tons Bar Iron.	Barrels Fish.	Kegs Nails.
805	60,139	167,603	8,343	2,986	2,406	93	.....	.....	.....	....	....	.....	.....	.....	.....	.....	....	.....	.....	.....
717	63,886	201,825	3,534	1,777	2,366	54	.....	.....	.....	....	....	.....	.....	.....	.....	.....	....	.....	.....	.....
1,053	71,442	281,703	2,609	641	2,588	127	18,418	3,983	.....	....	...	.....	.....	28,205	1,010	130	....	.....	.....	.....
1,547	79,190	299,982	1,700	500	3,865	339	36,446	10,780	.....	....	....	.....	.....	19,327	4,860	204	....	.....	.....	.....
1,429	113,890	222,474	814	740	6,697	74	23,462	10,595	.....	....	....	.....	.....	24,968	4,190	365	....	.....	.....	.....
1,598	76,767	242,937	145,711	4,825	8,533	109	27,446	11,651	.....	159	....	.....	.....	32,366	3,548	875	436	260	3,580	4,522
1,294	91,692	327,483	51,314	4,562	8,056	500	30,797	10,594	.....	122	....	.....	.....	34,889	5,894	1,735	156	385	2,805	5,602
1,196	137,315	495,991	147,606	7,601	8,445	227	37,997	9,390	.....	165	....	.....	.....	40,911	6,847	1,653	731	521	3,029	7,126
1,463	128,250	490,013	47,341	2,940	6,182	126	35,937	17,190	.....	285	....	.....	.....	28,161	5,551	3,287	408	643	2,521	10,816
1,040	95,473	445,747	16,316	2,459	3,352	18	27,531	28,528	.....	343	....	.....	8,011	29,022	5,372	2,916	168	2,657	3,958	5,627
1,509	110,231	506,056	9,035	3,257	1,307	41	21,752	22,729	.....	622	....	.....	7,958	40,246	6,366	4,558	362	4,974	4,563	11,110
2,456	114,932	682,694	10,704	1,927	3,195	88	21,098	14,915	.....	649	....	.....	6,994	38,390	10,094	5,354	505	5,357	5,183	13,661
1,628	109,298	760,849	16,340	531	2,353	17	20,533	11,535	.....	400	....	.....	7,620	33,489	6,968	6,114	384	4,796	4,768	14,101
1,360	106,881	482,144	12,923	1,578	4,339	35	21,152	7,028	.....	225	....	.....	7,396	34,341	8,109	5,373	270	3,235	5,221	11,827
1,755	117,034	687,959	17,311	1,984	5,166	....	19,084	7,560	.....	78	....	.....	5,623	31,777	6,213	5,311	211	4,131	5,311	12,246
1,485	94,183	619,065	5,069	2,248	5,640	624	28,828	3,475	.....	....	....	.....	6,406	26,577	4,033	7,734	247	642	4,669	9,280
1,138	112,969	926,482	10,457	690	5,298	....	17,477	3,309	226	507	....	.....	6,076	27,621	6,112	6,226	62	486	5,315	11,364
1,378	104,434	723,479	12,865	999	4,814	....	14,156	7,015	1,072	371	226	2,103	5,689	25,586	5,145	6,631	259	2,601	6,246	14,288
2,308	78,711	695,388	10,933	577	4,177	....	21,305	20,898	1,064	109	171	307	9,540	26,045	9,075	9,724	362	2,518	3,952	16,390

No. 10

pal Articles conveyed on the Canal of the James River and Kanawha Company, several periods specified

ARTICLES BROUGHT DOWN THE CANAL												ARTICLES CARRIED UP CANAL								
Bushels Wheat.	Bushels Corn.	Bushels Oats.	Tons Pig Iron.	Tons Bar Iron.	Tons Coal.	Tons Stone.	Tons Copper Ore,	Tons Bar and Pig Lead.	Dried Fruit.	Barrels Apples.	Cords Wood.	Sacks Salt.	Tons Plaster.	Tons Coal.	Tons Castings.	Tons Bar Iron.	Barrels Fish.	Kegs Nails.	Tons Guano.	Total Tonnage Each Year.
167,603	8,343	2,986	2,406	93	.....	.....	.....	....	....	.....	.....	.....	.....	.....	....	.....	.....	.....	.....	112,707
201,825	3,534	1,777	2,366	54	.....	.....	.....	....	....	.....	.....	.....	.....	.....	....	.....	.....	.....	.....	113,742
281,703	2,609	641	2,588	127	18,418	3,983	.....	....	..	.....	.....	28,205	1,010	130	....	.....	.....	.....	.....	122,695
299,982	1,700	500	3,865	339	36,446	10,780	.....	....	....	.....	.....	19,327	4,860	204	....	.....	.....	.....	.....	134,759
222,474	814	740	6,697	74	23,462	10,595	.....	....	....	.....	.....	24,968	4,190	365	....	.....	.....	.....	.....	125,653
242,937	145,711	4,825	8,533	109	27,446	11,651	.....	159	....	.....	.....	32,366	3,548	875	436	260	3,580	4,522	.....	146,442
327,483	51,314	4,562	8,056	500	30,797	10,594	.....	122	....	.....	.....	34,889	5,894	1,735	156	385	2,805	5,602	.....	155,950
495,991	147,606	7,601	8,445	227	37,997	9,390	.....	165	....	.....	.....	40,911	6,847	1,653	731	521	3,029	7,126	.....	175,201
490,013	47,341	2,940	6,182	126	35,937	17,190	.....	285	....	.....	.....	28,161	5,551	3,287	408	643	2,521	10,816	.....	177,381
445,747	16,316	2,459	3,352	18	27,531	28,528	.....	343	....	.....	8,011	29,022	5,372	2,916	168	2,657	3,958	5,627	1,977	174,615
506,056	9,035	3,257	1,307	41	21,752	22,729	.....	622	....	.....	7,958	40,246	6,366	4,558	362	4,974	4,563	11,110	3,064	210,040
582,694	10,704	1,927	3,195	88	21,098	14,915	.....	649	....	.....	6,994	38,390	10,094	5,354	505	5,357	5,183	13,661	3,573	231,032
760,849	16,340	531	2,353	17	20,533	11,535	.....	400	....	.....	7,620	33,489	6,968	6,114	384	4,796	4,768	14,101	7,515	225,613
482,144	12,923	1,578	4,339	35	21,152	7,028	.....	225	....	.....	7,396	34,341	8,109	5,373	270	3,235	5,221	11,827	7,696	201,721
587,959	17,311	1,984	5,166	....	19,084	7,560	.....	78	....	.....	5,623	31,777	6,213	5,311	211	4,131	5,311	12,246	6,654	194,626
619,065	5,069	2,248	5,640	624	28,828	3,475	.....	....	....	.....	6,406	26,577	4,033	7,734	247	642	4,669	9,280	7,045	183,363
926,482	10,457	690	5,298	....	17,477	3,309	226	507	....	.....	6,076	27,621	6,112	6,226	62	486	5,315	11,364	6,304	196,991
723,479	12,865	999	4,814	....	14,156	7,015	1,072	371	226	2,103	5,689	25,586	5,145	6,631	259	2,601	6,246	14,288	8,209	206,295
595,388	10,933	577	4,177	....	21,305	20,898	1,064	109	171	307	9,540	26,045	9,075	9,724	362	2,518	3,952	16,390	9,072	244,273

No. 11

Statement showing the amount of Actual Tonnage, the Equivalent Tonnage for one mile, the Equivalent Through Tonnage, the Annual Average Rate of Tolls per ton per mile, the amount of Tolls on Tonnage and on Passengers, the amount for Rent of Houses, Lots and Water Power, the Gross Receipts from Tolls, Rents and Scale House Fees, the Annual Expenses and Repairs of the Canal (including damages by freshes), with Salaries of Agents and the Net Revenue for the peroid stated.

	Actual Tonnage Conveyed on the Canal.	Equivalent Tonnage One Mile.	Equivalent Through Tonnage.	Average Rate of Toll per Ton per Mile, Cents.	Amount of Tolls on Tonnage.	Amount of Tolls on Passengers.	Amount of Rent for Houses, Lots and Water Power, and Scale House Fees.	Gross Receipts from Tolls, Rents and Scale House Fees.	Expenses and Repairs of Canal (including damages by freshets), Salaries of Agents, &c.	Net Revenue from the Canal.
From January 1 to November 30, 1841.....	110,141	6,426,271	44,015	1.81	$116,382 93	$5,368 36	.....	$121,751 29	$62,140 96	$59,610 33
From December 1, 1841, to November 30, 1842..	112,707	5,802,007	39,740	1.78	103,430 94	5,797 74	5,584 28	114,812 97	95,439 02	19,373 95
From December 1, 1842, to October 31, 1843....	113,742	6,258,896	42,869	2.62	163,595 87	4,299 05	7,826 93	175,721 85	74,706 98	101,014 87
From November 1, 1843, to October 31, 1844....	122,695	6,009,719	41,162	2.88	173,569 29	4,189 29	9,630 06	187,388 64	54,337 56	133,051 08
From November 1, 1844, to October 31, 1845....	134,759	7,108,163	48,686	2.56	181,772 11	5,313 69	6,565 25	193,651 05	65,131 47	128,519 58
From November 1, 1845, to October 31, 1846....	125,653	7,640,263	52,331	2.15	163,930 58	7,258 04	7,189 15	178,377 77	51,889 29	126,488 48
From November 1, 1846, to October 31, 1847....	146,442	8,588,821	58,828	2.27	194,896 81	8,708 79	8,155 54	211,761 14	71,342 74	140,418 40
From November 1, 1847, to October 31, 1848....	155,950	8,998,032	61,630	2.18	196,628 89	6,241 22	5,912 09	208,755 20	83,128 14	125,627 06
From November 1, 1848, to October 31, 1849....	175,210	10,319,149	70,680	2.21	237,188 89	4,347 44	8,193 45	249,729 78	74,090 29	175,639 49
From November 1, 1849, to October 31, 1850....	177,381	9,708,415	66,496	2.33	226,547 56	3,791 58	9,345 35	239,684 49	83,715 47	155,969 02
From November 1, 1850, to September 30, 1851..	174,614	9,983,968	68,383	2.10	209,500 41	3,943 65	8,669 51	222,113 57	64,146 78	157,966 79
From October 1, 1851, to September 30, 1852....	210,040	16,224,732	82,569	1.64	264,860 51	4,350 30	8,238 16	277,448 97	95,258 50	182,190 47
From October 1, 1852, to September 30, 1853....	231,032	19,545,183	99,467	1.43	278,808 45	5,190 15	9,514 32	293,512 92	123,144 11	170,368 81
From October 1, 1853, to September 30, 1854....	225,612	21,873,334	111,315	1.27	277,731 52	5,081 01	8,785 47	291,598 00	130,942 90	160,655 10
From October 1, 1854, to September 30, 1855....	201,721	19,600,825	97,205	1.12	220,972 25	2,896 18	10,140 74	234,009 17	126,723 10	107,286 07
From October 1, 1855, to September 30, 1856....	194,626	18,166,552	92,451	1.07	196,892 49	2,304 97	11,519 59	210,717 05	104,340 65	106,376 40
From October 1, 1856, to September 30, 1857....	183,363	13,961,039	71,230	1.27	179,495 70	2,129 05	9,628 36	191,253 11	181,753 47	9,499 64
From October 1, 1857, to September 30, 1858....	196,991	17,174,512	87,148	1.18	203,475 00	2,183 86	9,751 66	215,410 52	221,766 86	6,356 34
From October 1, 1858, to September 30, 1859....	206,295	15,946,077	81,154	1.03	172,849 62	2,125 40	14,087 18	189,062 20	127,833 56	61,228 64
From October 1, 1859, to September 30, 1860....	244,273	17,650,750	89,826	1.30	224,179 90	5,076 64	9,734 73	238,991 27	133,062 85	105,928 42

No. 12

'able Showing the Number of Tons and Amount of Tolls under each rate in the Tariff, for the year ending September 30, 1860.

RATE OF TOLL	TONS.	TOLLS.
¼ cent per ton per mile	87,851.	$9,460 56
½ cent per ton per mile	40,241.4	19,524 01
cent per ton per mile	43,300.4	27,792 81
½ cents per ton per mile	16,584.3	35,247 53
cents per ton per mile	15,625.8	38,642 64
½ cents per ton per mile	17,835.5	16,953 81
cents per ton per mile	10,496.1	40,408 50
cents per ton per mile	12,912.5	35,015 12
	244,847	$223,044 98
Penalties		291 64
Passengers		5,076 64
Boat tolls		1,686 23
		$230,099 49
Refunded		731 34
		$229,368 15

NO. 13.

Monthly Receipts of Dockage—Commencing September 1, 1854.

MONTHS.	1854–55.	1855–56.	1856–57.	1857–58.	1858–59.	1859–60
September	$2,400 00					
October	$3,100 00	$3,800 00	$3,000 00	$3,430 42	$4,600 00	$5,837 95
November	3,200 00	3,316 89	3,250 00	2,560 00	3,620 31	4,714 85
December	2,097 71	2,942 21	3,398 91	3,641 11	3,146 94	4,155 90
January	1,957 80	350 00	350 00	1,634 61	2,005 30	1,750 00
February	1,668 00	.....	1,556 92	2,750 00	3,500 00	2,900 00
March	2,837 21	4,385 48	4,886 46	3,905 16	4,300 31	4,974 36
April	2,960 30	3,384 00	3,500 00	3,504 12	3,359 53	4,080 00
May	2,600 00	3,750 00	3,400 00	2,850 00	3,790 00	3,058 00
June	2,406 72	2,712 14	3,261 73	3,295 10	3,770 03	4,628 17
July	2,750 63	2,880 00	2,600 00	3,450 00	4,132 00	3,938 70
August	3,784 23	4,462 25	5,000 00	4,700 00	4,900 00	4,808 16
September	3,609 86	4,731 31	5,349 91	5,955 60	5,291 45	5,281 94
Total	$32,972 46	$36,714 28	$39,553 93	$41,676 12	$46,415 87	$50,128 03

No. 14

Monthly Receipts of Lock Tolls. Commencing September 1, 1854.

Months	1854–55	1855–56	1856–57	1857–58	1858–59	1859–60
September	$198 51					
October	$257 94	$180 72	$203 84	$230 76	$233 07	$299 49
November	283 50	138 45	209 00	212 97	296 63	288 50
December	134 52	124 78	244 00	249 29	208 89	202 74
January	203 95	.....	17 87	148 80	207 27	286 14
February	123 63	35 10	61 29	143 61	137 05	262 79
March	250 11	189 23	300 59	255 58	214 09	376 14
April	167 08	213 58	219 94	380 08	272 78	255 03
May	106 87	226 16	200 04	232 02	243 64	262 21
June	92 16	125 42	135 75	126 26	176 53	342 80
July	120 72	146 14	99 14	199 50	100 23	234 41
August	191 45	223 20	319 07	309 38	327 58	315 78
September	141 55	231 38	383 92	308 66	296 33	289 26
Total	$2,073 48	$1,834 26	$2,394 45	$2,796 91	$2,714 09	$3,415 29

JAMES RIVER AND KANAWHA COMPANY

No. 16

Lewisburg, Sept. 27, 1860.

Sir:

I comply with the regulations of your company, by submitting to you a report of receipts, disbursements and condition of the Kanawha road and bridges for the fiscal year ending August 31, 1860.

Receipts.

Balance on hand, as per last annual report	942.12
Received from the turnpike gates	5,537.09
Received from Gauley Bridge	1,085.98
Received from Greenbrier Bridge	2,045.41
Received for two yoke of oxen	150.00
	9,760.60

Disbursements.

Road account	$6,607.63	
Bridge account	1,375.88	
Agency	883.32	
		$8,866.83
Leaving in agent's hands unexpended, a balance of		$893.77

Operations.

By reference to my report of 1859, you will note that the road in the Alleghany and Sewell region received great damage by the equinoctial gales that raged with much violence a few days previous to the date of my report. As indicated in that report, I proceeded to have the damages repaired without delay. The operations for the present season have been arduous and expensive on the entire road, and particularly so on the mountainous and hilly sections of the road, increased more than twofold by the frequent and washing rains that occurred in the months of July and August—indeed, no in-

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as

Monthly Rec

Months.	Year Ending September 30, 1841.	Year Ending September 30, 1842.	
October	.....	$11,017 18	
November	.....	10,091 80	
December	.....	6,407 97	
January	4,157 95	3,578 80	
February	5,160 71	5,493 05	
March	12,438 00	7,489 40	
April	11,403 53	8,992 81	
May	15,309 38	12,206 45	
June	13,043 72	12,240 49	
July	12,878 31	5,719 20	
August	14,195 03	6,560 19	
September	11,872 68	9,716 59	
Total	$100,459 31	$99,513 93	$

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No. 15

Monthly Receipts of Tolls—Commencing January, 1st, 1841.

...ber 1841.	Year Ending September 30, 1842.	Year Ending September 30, 1843.	Year Ending September 30, 1844.	Year Ending September 30, 1845.	Year Ending September 30, 1846.	Year Ending September 30, 1847.	Year Ending September 30, 1848.	Year Ending September 30, 1849.	Year Ending September 30, 1850.
...	$11,017 18	$16,002 39	$19,500 14	$18,766 23	$21,512 79	$19,185 58	$23,208 79	$26,954 95	$29,996 79
...	10,091 80	14,841 35	17,562 65	16,629 30	14,571 14	12,492 98	15,564 91	20,957 69	26,114 98
...	6,407 97	9,057 82	12,333 92	13,441 73	9,557 62	14,177 86	2,684 63	18,395 78	14,980 84
57 95	3,578 80	7,518 58	6,348 24	4,328 89	11,925 57	7,965 65	9,212 68	12,722 81	11,423 57
60 71	5,493 05	6,451 46	8,269 43	10,553 47	11,539 42	12,115 09	19,231 58	13,499 19	15,659 24
38 00	7,489 40	10,436 21	16,239 47	14,278 43	13,391 91	14,758 47	18,081 78	20,531 56	24,850 17
03 53	8,992 81	11,807 94	16,151 29	12,368 90	18,466 03	19,923 31	21,130 03	19,862 22	21,170 19
39 38	12,206 45	22,183 88	18,460 40	15,327 37	16,815 51	10,982 01	16,703 52	21,440 50	19,741 57
43 72	12,240 49	27,192 73	16,681 13	17,008 87	13,214 53	23,418 38	13,349 53	19,809 25	14,541 74
73 31	5,719 20	17,521 66	17,167 22	14,980 31	14,178 01	22,106 36	12,713 10	14,512 35	14,455 02
03	6,560 19	18,518 88	15,624 29	20,967 99	15,444 47	19,628 08	22,810 12	22,105 15	16,498 45
68	9,716 59	17,705 62	14,110 45	25,552 58	13,001 86	22,828 62	24,396 28	27,703 04	24,325 01
31	$99,513 93	$179,238 52	$178,448 63	$184,204 07	$173,618 86	$199,582 39	$199,086 95	$238,494 49	$233,757 57

Monthly Receipts of Tolls—Continued.

Months.	Year Ending September 30, 1851.	Year Ending September 30, 1852.	Year Ending September 30, 1853.	Year Ending September 30, 1854.	Year Ending September 30, 1855.	Year Ending September 30, 1856.	Year Ending Septe 30, 18
October	$26,578 36	$25,876 80	$31,768 70	$35,715 57	$28,953 63	$19,994 05	$22,4
November	20,403 88	20,255 89	22,236 49	26,404 80	25,701 36	18,960 14	20,1
December	14,060 01	11,288 89	17,238 65	19,823 73	11,153 74	11,801 51	13,3
January	17,312 53	12,565 69	16,163 28	14,120 41	17,402 04	530 13	1
February	16,540 24	22,644 44	20,850 69	22,906 25	10,898 08	1,565 56	11,6
March	21,654 70	31,736 88	33,286 35	27,511 75	25,912 45	22,790 51	26,8
April	24,795 73	20,690 87	28,073 44	22,957 31	21,097 70	24,954 92	20,3
May	21,436 11	27,127 86	22,100 52	18,863 53	13,082 43	26,381 18	6,5
June	15,196 33	21,549 09	17,002 69	17,524 00	13,149 97	11,403 13	12,3
July	15,945 85	17,276 25	18,404 65	18,374 47	14,650 99	15,313 83	8,9
August	20,632 83	25,131 35	20,141 02	25,552 75	19,756 31	20,333 39	17,9
September	25,487 79	33,066 80	36,729 12	33,057 96	22,109 73	25,169 11	21,0
Total	$240,044 36	$269,210 81	$283,998 60	$282,812 53	$223,868 43	$199,197 46	$181,6

Monthly Receipts of Tolls—Continued.

Year ending tember 1851.	Year Ending September 30, 1852.	Year Ending September 30, 1853.	Year Ending September 30, 1854.	Year Ending September 30, 1855.	Year Ending September 30, 1856.	Year Ending September 30, 1857.	Year Ending September 30, 1858.	Year Ending September 30, 1859.	Year Ending September 30, 1860.
,578 36	$25,876 80	$31,768 70	$35,715 57	$28,953 63	$19,994 05	$22,429 82	$18,626 93	$18,332 01	$20,778 35
,403 88	20,255 89	22,236 49	26,404 80	25,701 36	18,960 14	20,161 02	17,138 55	14,826 53	17,957 58
,060 01	11,288 89	17,238 65	19,823 73	11,153 74	11,801 51	13,333 20	15,592 17	9,866 66	13,204 84
,312 53	12,565 69	16,163 28	14,120 41	17,402 04	530 13	121 14	15,557 01	9,881 73	9,658 76
,540 24	22,644 44	20,850 69	22,906 25	10,898 08	1,565 56	11,629 37	14,982 26	12,813 73	15,793 97
,654 70	31,736 88	33,286 35	27,511 75	25,912 45	22,790 51	26,809 70	20,806 46	17,058 66	28,300 24
,795 73	20,690 87	28,073 44	22,957 31	21,097 70	24,954 92	20,340 29	21,662 37	17,023 62	22,961 35
,436 11	27,127 86	22,100 52	18,863 53	13,082 43	26,381 18	6,533 66	18,758 97	13,582 89	17,585 99
,196 33	21,549 09	17,002 69	17,524 00	13,149 97	11,403 13	12,311 74	11,529 68	11,017 94	17,097 96
,945 85	17,276 25	18,404 65	18,374 47	14,650 99	15,313 83	8,990 48	12,994 06	9,503 67	13,041 38
,682 83	25,131 35	20,141 02	25,552 75	19,756 31	20,333 39	17,909 10	17,544 27	20,739 64	25,668 46
,487 79	33,066 80	36,729 12	33,057 96	22,109 73	25,169 11	21,053 03	20,466 13	20,327 94	27,207 66
,044 36	$269,210 81	$283,998 60	$282,812 53	$223,868 43	$199,197 46	$181,622 55	$205,658 86	$174,975 02	$229,256 54

considerable portion of our road on the mountains and hills as often as three different times. Nearly the whole is at this time in good repair, and the whole will be in a few days more. Its condition is such, I think, that that portion of the road approximating to a level will require but little work next year, compared to the amount we have done this. The mountains and hilly portions may, if we have as many and as violent storms as we have had this year, require as much work upon them.

Bridges.

The bridge carried away in Little Sewell Valley was replaced with entire new timbers, except the flooring, which lodging a short distance below the site of the old bridge, was hauled back and put on the new under work. The other bridge also in Little Sewell Valley was rebuilt in the spring, except the flooring. All of the bridges in the Gauley range east of Gauley Bridge have been generally repaired and newly floored this year. The abutments of the bridge over Witcher's Creek were considerably damaged by refluent water from the Kanawha River in the fall of 1859. The damages were repaired as quickly as masons and laborers could be obtained. A new floor has been put on this bridge. The bridge at the Burning Spring had settled very much on the lower side, so much so as to cause complaint. I have had it righted up, and additional braces added thereto. This bridge, as also the bridge nearest Charleston, I have had newly floored during the summer. The upper bridge over Mud River is now being refloored and repaired. The lower bridge over the same stream will be reshingled this fall. The Greenbrier Bridge is yet only partially reshingled, I regret to inform you, owing to the failure of the contractor to get the shingles in compliance with his contract. I have contracted for the deficit with a new contractor; and if he complies with his contract, the whole bridge will be reshingled in November. The bridges generally are in much better condition than they were at this time last year.

Another year of extensive repairs will put the whole of them in such condition as to require but little to be done to them for several years thereafter—accidents by flood and fire excepted.

Respectfully submitted by

Your most ob't servant,

A. MICHAELS,

Agent W. I.

Col. Thomas H. Ellis, Pres. J. R. and K. Co.

No. 17

SUMMARY STATEMENT of Receipts and Disbursements of the James River and Kanawha Company for the year ending September 30, 1860.

IMPROVEMENTS IN OPERATION
WESTERN IMPROVEMENTS

KANAWHA ROAD

Receipts:			
From tolls at gates and bridges.....			$8,818 48
Disbursements:			
Road account.....		$6,696 96	
Bridge account.....		1,832 87	
Agency account.....		883 32	
			9,413 15
Amount in agent's hands.....	$472 69		

KANAWHA RIVER

Receipts:				
From tolls			$9,864 28	
Disbursements:				
River expenses and agency			2,116 24	
			$7,748 04	$594 67

KANAWHA IMPROVEMENT

Receipts:				
From state stock		$40,000 00		
Disbursements:				
Pay and expenses of engineers	$1,849 35			
Dams and sluices	23,832 00			
Kanawha board, Pay and expenses	2,726 45			
		28,407 80		
			11,592 20	
				19,340 24
				$18,745 57

Amount in agents hands less amount reported by collectors as delinquent.....	$11,269 83		
Amount in Bank of Va. at Charleston.....	6,178 40		
Amount in hands of Kanawha board.....	417 45		
Amount of state stock on hand.....	20,000 00		
Bought forward.....			$18,745 57

BLUE RIDGE TURNPIKE AND FERRY

Receipts:			
From tolls.....		$217 27	
Disbursements:			
Expenses and repairs.....		755 26	
			537 99
			$18,207 58

RICHMOND DOCK

Receipts:			
From dockage		$50,128 03	
Disbursements:			
Expenses and repairs	$3,457 26		
Salaries of agents	4,264 26		
		7,721 52	
			42,406 51
Amount in agent's hands	$11,528 80		$60,614 09

CANAL FROM RICHMOND TO BUCHANAN

Receipts:		
From tolls on canal	$225,554 79	
From tolls on five locks and dock	3,415 29	
From penalties	286 46	
From rents	9,734 73	
		238,991 27

Disbursements:				
Expenses and repairs:				
First division		$72,722 80		
Second division		15,922 56		
Salaries of agents:				
First division		22,199 73		
Second division		6,750 00		
General administration:				
Salaries of officers		7,313 32		
Pay and mileage of directors		1,462 75		
Expenses of meetings of stockholders, legal expenses, printing, etc.		6,115 20		
		$132,486 36		
Five locks T. W.:				
Expenses and repairs		$26 51		
Salaries of agents		549 98		
			133,062 85	
				105,928 42
				$166,542 51
Amount in agent's hands	$4,868 12			

MISCELLANEOUS ACCOUNT

Receipts:		
From South side connections:		
Bent Creek bridge	$100 00	
New Canton bridge	225 00	
Brought forward	325 00	$166,542 51
Hardwicksville bridge	100 00	
North river bridge	450 00	
From contruction of works, 1st division:		
Property sold	4,500 00	
From interest on state stock	2,182 88	
From bills payable:		
Certificates to First auditor	132,369 30	
Certificates to Second auditor	60 00	
From interest	404 96	
From subscribers to J. R. & K. Co.	43 60	
From second division A. N. R.:		
Damages	52 14	

From release of commonwealth's liens.....	360,214 44	
From capital stock (preferred).....	7,400,000 00	
From fourth division:		
Expenses of engineers.....	1,020 62	
		7,901,722 94
Disbursements:		
Construction.....	$23,477 31	
Expenses and repairs.....	1,481 58	
Pay of engineers.....	3,066 66	
Interest on North river bonds.....	13,200 17	
Construction of works 1st division:		
Lynchburg feeder canal.....	2,825 34	
Fourth division:		
Expenses of engineers.....	637 70	
Interest.....	39,067 42	

Rivanna connection:	
Sections	270 60
Damages	1,780 92
State tax	1,374 77
Interest on bond to state	1,280 00
Bills payable	196,619 56
South side connections:	
New Canton bridge:	
Construction	1,559 43
Insurance	150 00
Bent Creek bridge:	
Insurance	150 00
Hardwicksville bridge:	
Insurance	150 00
Tide water connection:	
Dock wall	842 07
Dividend on guaranteed loan	150 00

Certificates to 1st auditor:				
Dividends of 1839	80,913 30			
Dividends tide water connection	20,853 00			
Dividends S. S. and R. connections	9,003 00			
Dividends third division	21,600 00			
Certificates to 2d auditor:				
Dividends of 1839	60 00			
	420,512 83			
Brought forward		$420,512 83	$7,901,722 94	$166,542 51
Disbursements included in settlement with the commonwealth:				
Loan of state stock	$250,000 00			
State's loan of interest money	57,559 00			
State's loan for resumption of works	1,236,000 00			
State's loan for completion of works	110,000 00			
State's loan, act 5th June, 1852	120,000 00			
State's loan for completion of T. W. C...	130,000 00			

State's loan for 3d division	580,000 00
State's loan for T. W. C.	60,000 00
Guaranteed loan, old issue	1,400,000 00
Guaranteed T. W. Con.	350,000 00
Guaranteed S. S. and R.	150,000 00
Guaranteed 3d division	360,000 00
Bills payable, notes	46,000 00
Certificates:	
To first auditor	469,188 30
To second auditor	202,821 30
Bond given to the state	268,645 33
Interest on bond to the state	125,676 73
Interest on loan of state stock	95,000 00
Interest on state's loan for resumption	469,680 00
Interest on state's loan for completion	41,800 00
Interest on state's loan, act 5th June, 1852	45,600 00
Interest on state's loan, act 2d March, 1852	255,382 28
Interest on state's loan for completion T. W. C.	28,583 33

Interest on state's loan for T. W. Con...	24,500 00			
Interest on state's loan of interest money	46,006 48			
Interest on bills payable.....	11,684 75			
Interest on certificates to 1st auditor....	45,775 93			
Interest on certificates to 2d auditor....	60,620 25			
Dividends on guaranteed loan.....	33,603 40			
Dividends on T. W. Con.....	7,324 00			
Dividends on S. S. and R. Con.....	3,063 00			
Dividends on 3d division.....	7,200 00			
Dividends of the J. R. Co.....	118,500 00			
Principal of the annuity.....	350,000 00			
		7,560,214 44		
			7,980,727 27	
				79,004 33
				87,538 18
Excess of disbursements over receipts, September 30, 1859.....				283,194 58
Excess of disbursements over receipts, September 30, 1860.....				$195,656 40

UNFINISHED IMPROVEMENTS.

Third Division (From Buchanan to Covington).

Balance October 1, 1859		$303,481.56
Receipts:		
From amount refunded on account of expenses of engineers		6.00
		$303,487.56
Disbursements:		
Locks		1,573.14
		$301,914.42
Balance of appropriation for third division	$301,914.42	
Excess of disbursements over receipts, on account of improvements in operation	195,656.40	
Balance		$106,258.02
Balance in Bank of Virginia, October 1, 1860	$ 7,286.02	
Balance in Bank of Virginia, at Charleston, October 1, 1860	6,178.40	
Amount in agents' hands	28,556.89	
Amounts of bills receivable:		
Notes	4,976.95	
State stock	62,100.00	
		$109,098.26
Warrants afloat		2,840.24
Balance		$106,258.02

E. E.

WM. P. MUNFORD, Sec.

Office James River and Kanawha Company,
Richmond, October 1, 1860.

Receipts:

From income of old works, viz.:

Old canal (tolls and rents).....

Kanawha road.....

Kanawha river.....

Blue Ridge canal (including turnpike and ferry).....

From income of the new canal from Richmond to Buchanan, viz.:

Tolls.....

Rents.....

Scale-house fees.....

From premium and interest on state's loan for resumption of works above Lynchburg.....

From premium and interest on state's loan for completion of works to Buchanan

From premium and interest on guaranteed loan:

For the tide water connection.....

For the south side and Rivanna connections.....

For the third division.....

From bills payable.....

From tolls at Bent Creek Bridge.....

From tolls at New Canton Bridge.....

From tolls at Hardwicksville Bridge.....

From insurance on New Canton Bridge.....

From tolls at the North river.....

From income of the Richmond dock.....

From income of five locks T. W. C.....

RSEMENTS of the James River and Kanawha Company from its organization to the 30th September, 1860

OLD IMPROVEMENTS AND NEW WORKS IN OPERATION.

.....	$291,807 87		**Disbursements:**		
.....	238,558 99		For repairs and maintenance of the Old Canal, from Richmond to Maiden's Adventure	$60,436 98	
.....	226,228 55		Kanawha road	225,739 67	
.....	36,750 14		Kanawha river	80,385 77	
		$793,345 55	Blue Ridge canal (including turnpike and ferry)	45,150 55	$411,712 97
viz.:					
.....	$4,061,852 15		New Canal, from Richmond to Buchanan	$1,811,260 93	
.....	168,265 66		Damage to canal by fresh of July, 1842	67,542 23	
.....	774 11		Damage to canal by fresh of November, 1847	21,424 48	1,900,227 64
		4,230,891 92	Additional charges on revenue, viz.:		
of works above			Annuity to the old James river company	$517,500 00	
.....	$43,734 38		Dividends of the James river and Kanawha company	11,599 59	
orks to Buchanan	2,180 53		Dividends on guaranteed loan of 1839	1,179,134 44	
			Dividends on guaranteed loan for the tide water connection	93,454 00	
.....	4,290 61		Dividends on guaranteed loan for the Southside and Rivanna connections	42,678 37	
.....	3,006 97		Dividends on guaranteed loan for the third division	75,474 00	
.....	4,498 11		Interest on bond given to the state	267,858 47	
		57,710 60	Interest on state's loan for resumption of works	840,120 00	
			Interest on state's loan for completion of works to Buchanan	61,600 00	
.....	$152,055 12		Interest on loan of state stock, March 1842 and June 1852	271,723 90	
.....	582 28		Interest on state's loan of March 2, 1853, for third division	278,426 34	
.....	892 25		Principal of the annuity to old James river company	350,000 00	
.....	685 30		Interest on state's loan, March 29, 1863, and March 3, 1854, for T. W. connection	58,697 67	
.....	10,000 00		Interest on bonds of the North river navigation company	80,590 57	
.....	516 23		Interest on state's loan of 5th June, 1852	45,600 00	
.....	332,209 35		Interest on state's loan of interest money	46,006 48	
.....	15,426 99		Interest on bills payable	11,684 75	
		512,367 52	Interest on certificates to first auditor	45,775 93	
		$5,594,314 59	Interest on certificates to second auditor	60,620 25	
			Other items of interest and discount	121,164 59	
			Expenses of general administration of company	177,642 46	
			Certificates to the first auditor	469,188 30	
			Certificates to the second auditor	202,821 30	5,309,361 38
			For repairs and maintenance of Richmond dock	74,280 58	
			For repairs and maintenance of five locks T. W. C.	5,606 93	79,887 51

			Disbursements:		
			For repairs and maintenance of the Old Canal, from Richmond to Maiden's Adventure	$60,436 98	
	$291,807 87		Kanawha road	225,739 67	
	238,558 99		Kanawha river	80,385 77	
	36,750 14		Blue Ridge canal (including turnpike and ferry)	45,150 55	$411,712 97
		$793,345 55			
viz.:			New Canal, from Richmond to Buchanan	$1,811,260 93	
	$4,061,852 15		Damage to canal by fresh of July, 1842	67,542 23	
	168,265 66		Damage to canal by fresh of November, 1847	21,424 48	1,900,227 64
	774 11		Additional charges on revenue, viz.:		
		4,230,891 92	Annuity to the old James river company	$517,500 00	
f works above			Dividends of the James river and Kanawha company	11,599 59	
	$43,734 38		Dividends on guaranteed loan of 1839	1,179,134 44	
rks to Buchanan	2,180 53		Dividends on guaranteed loan for the tide water connection	93,454 00	
			Dividends on guaranteed loan for the Southside and Rivanna connections	42,678 37	
	4,290 61		Dividends on guaranteed loan for the third division	75,474 00	
	3,006 97		Interest on bond given to the state	267,858 47	
	4,498 11		Interest on state's loan for resumption of works	840,120 00	
		57,710 60	Interest on state's loan for completion of works to Buchanan	61,600 00	
	$152,055 12		Interest on loan of state stock, March 1842 and June 1852	271,723 90	
	582 28		Interest on state's loan of March 2, 1853, for third division	278,426 34	
	892 25		Principal of the annuity to old James river company	350,000 00	
	685 30		Interest on state's loan, March 29, 1863, and March 3, 1854, for T. W. connection	58,697 67	
	10,000 00		Interest on bonds of the North river navigation company	80,590 57	
	516 23		Interest on state's loan of 5th June, 1852	45,600 00	
	332,209 35		Interest on state's loan of interest money	46,006 48	
	15,426 99		Interest on bills payable	11,684 75	
		512,367 52	Interest on certificates to first auditor	45,775 93	
		$5,594,314 59	Interest on certificates to second auditor	60,620 25	
			Other items of interest and discount	121,164 59	
			Expenses of general administration of company	177,642 46	
			Certificates to the first auditor	469,188 30	
			Certificates to the second auditor	202,821 30	5,309,361 38
			For repairs and maintenance of Richmond dock	74,280 58	
			For repairs and maintenance of five locks T. W. C.	5,606 93	79,887 51
			State tax		1,374 77
					$7,702,564 27

NEW IMPROVEMENTS.

Brought forward			$5,594,315 59
RECEIPTS.			
From capital stock (original)		$5,000,000 00	
Less:			
State's credit for old works	$1,000,000 00		
Uncontrolled stock subscriptions	68,669 29		
		1,068,669 29	
			$3,931,330 71
From capital stock (preferred)			7,400,000 00
From release of commonwealth's liens			360,214 44
From interest on State stock			2,182 88
From State stock for Kanawha improvement			40,000 00
			$11,733,728 03

From sale of land received from the old James River company..	$28,484 46		
From post notes afloat	3,222 69		
		31,707 15	
			11,765,435 18
			$17,359,750 77
Brought forward			$7,702,564 27
DISBURSEMENTS.			
For construction of works, Richmond to Lynchburg		$5,365,307 06	
Expenditures on works above Lynchburg, previous to their suspension		482,428 57	
Purchase and improvement of Richmond dock		244,721 98	
Tide water connection, prior to loan of 9th March, 1849		9,233 00	
Tide water connection		598,199 21	
South side connections		164,694 52	
Rivanna connection		117,094 76	
Western surveys		25,028 99	
Third division, from Buchanan to Covington		638,085 58	
Fourth division, from Covington to Greenbrier River		12,668 15	

North River improvement	109,037 50	
Kanawha River improvement	45,376 14	
		7,811,875 46
For loss by General Hamilton's agency	63,820 45	
Notes from delinquent subscribers and others, for arrearages	4,241 84	
Securities in agents' hands collecting stock arrearages	381 73	
		68,444 02
For construction of works from Lynchburg to Buchanan, viz.:		
Above North River	717,959 68	
Below North River	952,649 32	
		1,670,609 00
Balance on hand		106,258 02
		$17,359,750 77

WM. P. MUNFORD, Secretary.

Office of the James River and Kanawha Company, Richmond, October 1, 1860.

No. 19.

Richmond, Va., Sept. 14, 1860.

Dear Sir:

I have read, and carefully considered the contract and accompanying papers, relating to the James River and Kanawha Canal Company, which were submitted to me, by you, on Friday evening last.

The only provision in the contract, to which I object, is contained in the eighth section, which authorizes "the tolls on way trade" to "be increased one-third" beyond the rates that are imposed upon the through trade. This is a discrimination against our own citizens, in favor of citizens of other states, that is in my judgment unjust. I can see no reason for the imposition of heavier tolls upon way trade than are levied upon through trade.

The subject is, in the highest degree, important to the people of Virginia, and deserves the serious consideration of the legislature. I have determined, therefore, to comply with the request contained in the second resolution adopted at the late meeting of the stockholders, and will "convene the general assembly in extra session, for the purpose of considering the agreement which has been approved" by them.

The fourteenth day of January next will be the day on which the general assembly will convene.

I am, truly,

Your obedient servant,

JOHN LETCHER.

Thomas H. Ellis, Esq., Pres. J. R. and K. Co.

No. 20.

(The report of the Kanawha board and the documents accompanying it were received at the office of the company, through the hands of George W. Randolph, Esq., on the 29th October.)

Gentlemen:

I have the honor to submit, on behalf of the Kanawha board, the following report for your consideration:

The position of the Kanawha board, at the date of its last annual report, is familiar to you all. The Eastern board had sought, by the exercise of arbitrary power, to terminate the existence of the Kanawha board; had passed a resolution declaring it functus officio; had appointed a commissioner to take charge of its books and papers, and directed the collectors on the Kanawha River to disregard its authority, and to enter into new bargains, and make their reports direct to the office in Richmond. Against this action the Kanawha board appealed to the stockholders, and suggested in their report that an application be made to the next general assembly of Virginia, so to amend the act of the 15th February, 1858, as to define more accurately the rights, powers and duties of the boards with reference to the Kanawha improvement. The course of the Kanawha board was sustained by the stockholders in general meeting assembled, in October, 1859, and at the ensuing session of the legislature, an act was passed on the 23d of March, 1860, entitled an act to amend the charter of the James River and Kanawha Company and placing under the exclusive control of the Kanawha board of directors three hundred thousand dollars of the six per cent. registered stock of the commonwealth, to be used by them for the improvement of the navigation of the Kanawha River, from the mouth thereof to Loup Creek Shoals; and the Kanawha board was authorized and directed to prosecute said improvement, and

was invested with the entire control and management of the same, "free from the control or direction of the president and directors of said James River and Kanawha Company, and which is known as the Eastern board." It is worthy of remark, that the president of the company, in submitting this act to the stockholders for their acceptance, deemed it his duty to protest against the terms of the provision made for the improvement of the Kanawha river.

The act passed March 23, 1860, was accepted by the stockholders of the company, at a called meeting held the 25th day of April, 1860; at the same time the president of the company was instructed by them to execute a deed of trust or mortgage upon the works, property and net revenue of the Kanawha line of improvements from the mouth of the Kanawha river to Loup Creek Shoals, to the commonwealth, for the payment of three hundred thousand dollars of six per cent. registered stock of the commonwealth, which by the act was directed to be issued and placed under the control of the Kanawha board, for the improvement of the Kanawha River.

Although no official notice of these proceedings had been communicated to the board, yet as the board had seen in the public papers that the amendatory act referred to had been accepted by the stockholders, and the president of the company instructed to execute the deed of trust required on the Kanawha line of improvement, it felt authorized to receive such propositions for the improvement of the river as might be submitted to its consideration.

At a meeting of the board held on the 14th day of May, 1860, two proposals to do the work were laid before the board —one by Mr. A. E. Cromwell, and the other by Messrs. Theodore D. Barton and Orville Robinson. The proposition of Messrs. Barton & Robinson being the lowest in amount, and most satisfactory in other respects, was accepted by the board; and on the 15th day of May, 1860, a contract was made and signed with those parties—a copy of which has been already

furnished to the president of the company, who will no doubt submit it to your consideration.

At the same meeting, the board elected John A. Byers, Esq., engineer of the improvement at a salary of $2,500 per annum, and authorized him to employ, when necessary, two assistant engineers—the first, at a salary of $1,000 per annum; the second, at a salary of $750 per annum; their salaries to commence from the date of their respective appointments, and to be paid at that rate for the time they are employed. Under the authority given him by the board, the engineer engaged the services of Wm. P. Douthat and James R. Houston as his assistants, each of whom had assisted in the preliminary survey of the river under the direction of Edward Lorraine, Esq., chief engineer of the James River and Kanawha Company, and was familiar with the surveys and levels throughout the line of the improvement. Each of the assistants has had three persons to help him in laying out the channel, and attending to the construction of the work—and occasionally, when current was unusually strong, it has been found necessary to employ an extra hand. The board directed the contractors to provide, as soon as practicable, four dredge boats, with the necessary dump and surface boats to tend them, and to commence to work at Elk Shoals with the two first completed, and which were to be built at the mouth of Elk River; and with the others, as soon as they could be ready, at the foot of Loup Creek Shoals, in the neighborhood of which they were to be built. This arrangement was adopted to save the expense, trouble and delay of towing the dredge boats, which are large and unwieldy, up the river.

In accordance with this arrangement, when the surveys at Elk Shoals were about completed and the channel marked out, the engineer corps was divided. Mr. Douthat with his party was directed to commence the work at the foot of Loup Creek Shoals and proceed down the river, while Mr. Houston and his party prosecuted it from Elk Shoals downwards. House boats were provided for each party, to enable the men to be at all times convenient to their work, and to have the

entire control of their time. These boats were purchased by the Kanawha board, but the furniture and supplies are, and will be, provided by the several parties at their own expense. Mr. Douthat commenced the work on Elk Shoals on the first of June, 1860, and up to the close of the fiscal year had, in addition to the work done by him there, surveyed and laid out the channels from the foot of Loup Creek Shoals to the foot of Hunter's Shoals, comprising seven shoals and riffles, having an aggregate fall of 17½ feet in a distance of 6 2/5 miles, and requiring about 50,000 cubic yards of excavation; and Mr. Houston, who commenced work on the 15th June, 1860, had, up to the same period, prepared the work for the contractors from the head of Elk Shoals to the foot of Tyler Shoals, comprising four principal shoals with a fall of 12.64 feet in a distance of 4½ miles, and requiring about 47,000 cubic yards of excavation. It is proper to remark, that the frequent occurrence of freshets in the river during all the past summer, has interfered very much with the progress of the surveyors; and in addition to this, a greater proportion of the time of the engineers than was anticipated has been taken up in attending to the work of construction, in consequence of their being required to renew, almost daily, stakes, floats, levels and other work by which the line of the channel had to be designated.

It was not deemed expedient to disband the parties under the control of the engineers, whenever a rise would occur in the river, which stopped them from a survey of the channel, because of the delay of getting them together again and the unwillingness of the men to engage unless they had some assurance of permanent employment. The engineer was therefore directed to employ them during those intervals in surveying the various tributaries of the Kanawha, and in collecting information in relation thereto, with the view of preparing a complete and accurate map of the river, embracing the whole line of the improvement.

At the time the contract was made with Messrs. Barton & Robinson, the Kanawha board had already procured the ma-

chinery for one dredge boat, and had the wood work for the same, and for the tenders thereto, in process of construction. These boats were turned over to the contractors at cost, they agreeing to repay what the board had already expended for them, and to meet the deferred payments on them as they fell due.

The contractors commenced work on Elk shoals, on the 20th of June, 1860, with the dredge boat, the machinery for which had been procured and transferred to them by the Kanawha board; and of the three additional dredges which the contractors were required to furnish, two of them were to be at work by the middle of July, and the third by the first of August. But owing to the failure of the machinists to deliver the machinery in time, and other unexpected delays, it was the first week in September before a second dredge boat was at work, and as late as the first day of October before the remaining two were put into operation.

On the first day of October the shoal near the foot of Loup creek was about completed. At Elk Shoal there was 900 cubic yards of excavation and about $5,000 worth of rock and timber work remaining to be done. The bar above the mouth of Two Mile Creek, called "Young Two Mile," containing about 1,200 cubic yards, was completed, and about 700 cubic yards of excavation removed at Two Mile Shoal. The work done, and the materials and machinery furnished by the contractors, up to the close of the fiscal year, amount to the sum of $21,660.

By the terms of the contract, the contractors are bound to complete the work within fifteen months from its date. But in consequence of the delays referred to, and the interruptions which may be reasonably expected from ice and high water during the coming winter and spring, it is the opinion of the engineer that it will probably not be completed before the first of March, 1862. Although the work at Elk Shoal, which is upwards of 1,800 feet in length, is not entirely finished, enough has been done to enable boats to navigate the new channel with safety; and when the remaining work

is done, it is thought that it will meet all the requirements of the trade.

In addition to the work done by the contractors upon the river, a competent force under Capt. Johnson, was employed to set the buoys, repair damages caused by ice and high water, and to remove such obstructions as had been carried into the chutes and channels during the past winter and spring. This party set 235 buoys, put in ring bolts, and removed all temporary obstructions from the chutes and channels, at a cost, including tools and materials for the work and supplies for the hands, of $335.34.

A copy of the report of Wm. J. Rand, collector of tolls at Charleston, is herewith submitted, which returns the gross amount of tolls accounted for by him during the fiscal year, at $8,092.20. This shows a falling off from the gross amount of the last year, which is to be accounted for by the fact that there has been an entire suspension of the shipment of coal and a partial suspension of the shipment of salt, until Elk Chute is complete.

In explanation of the list of delinquents reported, it is proper to say that the item of $1,146.17 was permitted to accumulate, because the parties claimed damages of the board for salt lost upon an obstruction in the channel. The matter has been recently compromised and adjusted. The other accounts, with perhaps one exception, he expects to close up during the present month. The attachment law passed last winter has been of material service in the collection of tolls; but even with its aid, some delay seems to be unavoidable. See paper marked (R).

Previous to the first of January last the compensation of Mr. Rand had been a fixed salary of $1,000 per annum; but at the December meeting, 1859, the board changed the terms of his compensation, and fixed them as follows: "Two per cent. on all tolls collected, until the compensation amounts to $600; five per cent. on all over, until the compensation amounts to $200 more; and ten per cent. on all collections beyond these." This change took effect from the first of January,

1860, and was made to embrace only collections made by the collector of current tolls from and after that period, without recourse to courts of law, the resolution providing that the proceeds of all suits then brought or which should thereafter be brought for tolls, should be paid directly to the secretary, and deposited by him in bank to the credit of the board.

The gross amount of tolls collected by W. W. Sherwood, collector at Point Pleasant, during the fiscal year ending the 30th September, 1860, was	$1,825.30
Deduct compensation as heretofore paid by the board	494.05
Leaves the net amount received	$1,331.25

In accordance with the provisions of the act of March 23, 1860, and by the orders of the board, five several drafts for $20,000 each of the six per cent. registered stock of the commonwealth, have been drawn by the president pro tem. of this board, upon the board of public works. These drafts were drawn monthly, in the months of May, June, July, August and September, and each draft was accompanied by a copy of the resolution passed by the board of public works, and the certificates of stock ($40,000 in amount) received and deposited in the Bank of Virginia at Charleston, Kanawha.

The financial statement of the secretary is herewith submitted to your inspection, showing the amount of registered stock and moneys received and disbursed by the board during the fiscal year ending the 30th day of September, 1860.

A synopsis shows there has been received in registered stock	$40,000.00
Disbursed in stock	20,000.00
Balance on hand in registered stock	$20,000.00

See statement (A).

Received in money from tolls—in suit, etc	$ 373.53
Received in money from current tolls	9,206.25
	$9,579.78
Disbursed in money	9,398.94
Balance on hand in money	$ 180.84

See statement (B).

The president of the company, in a letter addressed to the president pro tem. of this board, dated the 14th day of May, 1860, which was accompanied by a manuscript report of the proceedings of the stockholders at their meetings on the 25th and 26th of April, 1860, called attention to sections 58 and 59 of the act of the 30th March, 1860, entitled an act for the assessment of taxes on persons and property. The communication of the president and the sections of the law referred to, were submitted to the board for its consideration, and after mature deliberation, and consultation with counsel, the board decided that the sections did not, in its opinion, apply to the Kanawha board.

In the month of September, at the instance of the president of the company, this matter was again brought to the notice of the board, when the board acting by the advice of its counsel, the Hon. G. W. Summers, furnished the statement and remitted the amount of tax imposed, accompanied by a protest, to the president of the company, to be used as in his discretion he might deem right. A copy of the opinion of the counsel of the board upon this legal question will be furnished as soon as it can be procured.

A "project of an executory agreement" for the sale of the entire line from Richmond to the Ohio river, to a French company, yet to be formed, together with the remarks of the president of the company and the proceedings of the stockholders in relation thereto, have been communicated to the president pro tem. and laid before the Kanawha board.

As to so much of this extraordinary agreement as embraces that portion of the line extending from Richmond to the Kanawha river, it is perhaps unnecessary for the Kanawha board to express any opinion. The Kanawha board was not consulted in regard to this agreement, and will not be entitled to share any part of the credit or discredit which may hereafter attach to it.

But against that part of the scheme which proposes to sell out the Kanawha river, it is the imperative duty of the Kanawha board to protest, respectfully but earnestly, against such sale to the French or Dutch, or any other adventurous purchaser, whether foreign or domestic. Especially does it protest against a scheme, the provisions of which if it is carried out are calculated to delay the improvement of the Kanawha river, to paralyze the industry of the country by prohibitory tolls, and to retard the development of the valley. And it appeals to the stockholders to reconsider their action and to retrace their steps in regard to the Kanawha river.

At present, so far as is known to the Kanawha board, the Frenchmen concerned in this scheme own no lands within the limits of Virginia,—but the legislature confirm to them this contract, and it will subject in a great degree the mineral wealth of the entire Kanawha valley to their control.

At its last session the legislature passed a law making provision for the improvement of the Kanawha River, and authorizing the Kanawha board to put the work under contract. That contract has been made, signed and sealed, and the improvement is steadily and successfully progressing. Under these circumstances the Kanawha board appeals to the stockholders and to the legislature not to sell out the improvement, but to permit it to be completed.

All of which is respectfully submitted.

JAMES L. CARR,

Pres. pro tem. of the Kanawha Board.

Stockholders of the J. R. & K. Co.

R.

An Abstract of Tolls Collected at Charleston, Kanawha.

1859.			
October	Gross amount of tolls this month..		
November	Gross amount of tolls this month..	$332 85	
December	Gross amount of tolls this month..	595 31	
1860.			
January	Gross amount of tolls this month..	343 50	
February	Gross amount of tolls this month..	539 20	
March	Gross amount of tolls this month..	1,224 08	
April	Gross amount of tolls this month..	995 82	
May	Gross amount of tolls this month..	1,058 99	
June	Gross amount of tolls this month..	996 48	
July	Gross amount of tolls this month..	588 82	
August	Gross amount of tolls this month..	615 17	
September	Gross amount of tolls this month..	532 08	
Total for the year			$8,092 20
To cash received on previous year			1,880 66
Total			$9,972 86

from October 1, 1859, to October 1, 1860.

1859.			
October	By cash paid into bank	$874 83	
November	By cash paid into bank	278 87	
December	By cash paid into bank	469 80	
1860.			
January	By cash paid into bank	391 45	
February	By cash paid into bank	244 44	
March	By cash paid into bank	2,451 70	
April	By cash paid into bank	728 46	
May	By cash paid into bank	533 02	
June	By cash paid into bank	526 91	
July	By cash paid into bank	579 83	
August	By cash paid into bank	313 75	
September	By cash paid into bank	400 00	
	Total for the year		$7,793 06

A list of delinquents accrued in the year above reported:

S. Robinson	$155 47	
Winifred M. & M. Co	312 62	
Merrein & Oakes	1,146 17	
Jas. M. Laidley	130 10	
Wm. R. Cox	29 01	
A. P. Terry & Bro	125 62	
Wm. A. Jackson	64 56	
R. W. Grogan	216 25	2,179 80
Total		$9,972 86

W. S. RAND, Col.

A copy from a paper filed in this office.

ALEX. T. LAIDLEY,
Secretary Kanawha Board.

A.

Statement Showing the Receipts and Disbursements of the the Commonwealth

RECEIPTS.

1860

Aug. 25, Received of the board of public works, in certificates of $1,000 each, and numbered from 356 to 375, inclusive $20,000.00

Sept. 28, Received of same, in certificates of $1,000 each, and numbered from 463 to 482, inclusive 20,000.00

$40,000.00

Sept. 30, Balance of registered stock on hand at date, as per contra $20,000.00

Kanawha Board of the six per cent. Registered Stock fo to Sept. 30, 1860.

DISBURSEMENTS.

1860

Sept. 30, This amount paid Barton & Robinson, contractors of the improvement of the Kanawha river, in stock, to date $20,000.00

This amount to balance 20,000.00

$40,000.00

JAMES RIVER AND KANAWHA COMPANY

B.

Annual Statement showing the Receipts and Disbursements by the
the year ending the

RECEIPTS.

1859.			
October	To balance in hand at date of last report.....		$82 99
	And the following received from collectors:		
	Received of Mr. Rand, Charleston office.....	$874 83	
	Received of Mr. Sherwood, Pt. Pleasant office.....	158 09	1,032 92

Kanawha Board of the James River and Kanawha Company, for 30th September, 1860.

DISBURSEMENTS.

1859.			
October	This amount paid Mr. Rand, salary and sundry accounts..	$99 33	
	This amount paid Mr. Ayres, for work on river.....	25 00	$124 33
November	This amount paid president pro tem, salary.....	300 00	
	This amount paid Mr. Rand, salary and sundry accounts..	101 53	
	This amount paid expenses of Mr. Byers, authorized to go north to contract for dredging machine, &c.....	200 00	
	This amount paid expenses for printing report, &c.....	21 00	
	This amount paid office rent...	12 50	635 03
December	This amount paid secretary, on his salary.....	151 89	
	This amount paid per diem of directors.....	95 00	
	This amount paid counsel fees.	100 00	
	This amount paid W. S. Rand, salary.....	83 33	
	This amount paid secretary, on his salary.....	30 00	
	This amount paid president pro tem, salary.....	150 00	
	This amount paid sundry accounts for work on river.....	195 54	805 67

RECEIPTS.

1859.			
November	Received of Mr. Rand.....	278 87	
	Received of Mr. Sherwood.....	27 99	306 86
December	Received of Mr. Rand.....	469 80	
	Received of Mr. Sherwood.....	24 05	493 85
1860.			
January	Received of Mr. Rand.....	391 45	
	Received of Mr. Sherwood.....	13 87	405 32
February	Received of Mr. Rand.....	244 44	
	Received of Mr. Sherwood	14 54	258 98

DISBURSEMENTS.

1860.			
January	This amount paid expenses of president pro tem to Richmond, on business of the board.....	340 00	
	This amount paid president pro tem on his salary.....	60 00	400 00
March	This amount paid Mr. Rand, sundry accounts.....	140 00	
	This amount paid expenses of removing and protecting machinery for dredge boat.....	32 00	
	This amount paid president pro tem on salary.....	200 00	372 00
April	This amount paid office rent..	12 50	
	This amount paid office expenses	5 10	
	This amount paid secretary on his salary.....	21 25	
	This amount paid Gorham's bill for goods, &c.....	12 64	
	This amount paid Osgood on dredge machinery.....	3,000 00	3,051 49
May	This amount paid Sherwood, commissions on collections..	13 19	
	This amount paid Rand, same.	71 90	
	This amount paid per diem of directors.....	69 00	
	This amount paid in service boats for dredge.....	600 00	
	This amount paid president pro tem on salary.....	333 33	1,087 42
June	This amount paid Sherwood, commission on collections...	17 00	

RECEIPTS.

1860.			
March	Received of Mr. Rand.....	2,451 70	
	Received of Mr. Sherwood.....	484 04	2,935 74
April	Received of Mr. Rand.....	728 46	
	Received of Mr. Sherwood.....	52 77	781 23
May	Received of Mr. Rand.....	533 02	
	Received of Mr. Sherwood.....	95 35	628 37
June	Received of Mr. Rand.....	526 91	
	Received of Mr. Sherwood.....	61 48	588 39
July	Received of Mr. Rand.....	579 83	
	Received of Mr. Sherwood.....	235 80	815 63

DISBURSEMENTS.

1860.			
June	This amount paid for work on river	6 00	
	This amount paid Rand's commission on collections	53 00	
	This amount paid secretary, on his salary	28 75	
	This amount paid for recording deed in Putnam county	2 61	
	This amount paid for office expenses	3 00	
	This amount paid engineer, for his department	300 00	410 96
July	This amount paid Sherwood, commission on collections	6 14	
	This amount paid Stalnaker, for removing obstruction from river	5 00	
	This amount paid Blaine, for timber	25 00	
	This amount paid president pro tem, his salary account	100 00	
	This amount paid Johnson, for setting buoys	155 25	
	This amount paid office rent	12 50	
	This amount paid engineer, for his department	100 00	403 89
August	This amount paid engineer, for his departmeht	570 00	
	This amount paid Rand, commission on collections	57 90	
	This amount paid Sherwood, same	3 58	
	This amount paid Johnson, for setting buoys	150 19	

RECEIPTS.

1860.			
August	Received of Mr. Rand, Charleston office	$313 75	
	Received of Mr. Sherwood, Pt. Pleasant office	203 76	517 51
September	Received of Mr. Rand	400 00	
	Received of Mr. Sherwood	41 45	441 45
	Received of Dr. Hale, on account of arrearages of tolls due from him, and which were in suspension on account of his claim for damages	339 58	

JAMES RIVER AND KANAWHA COMPANY

DISBURSEMENTS.

1860			
August	This amount paid Mr. Fry, director, per diem.....	15 00	
	This amount paid president pro tem, salary.....	100 00	896 67
September	This amount paid Rand, commission on collections.....	31 37	
	This amount paid Sherwood, same.....	40 37	
	This amount paid for recording deed in Mason county.....	2 47	
	This amount paid rent of office for directors.....	45 00	
	This amount paid directors, per diem, &c.....	62 00	
	This amount paid Wm. Kuhn & Co., bill of lumber.....	13 56	
	This amount paid Gorham's bill.	16 34	
	This amount paid office rent...	12 50	
	This amount paid Rand, commission on collections this month.....	40 00	
	This amount paid Sherwood, commission on collections this month.....	4 14	
	This amount paid president pro tem, on salary.....	160 00	
	This amount paid engineer, for his department.....	375 00	
	This amount paid for two books for office and office expenses..	5 00	
	This amount paid Dr. Hale on account of lost salt, the same having been settled by the board..... $363 30		

JAMES RIVER AND KANAWHA COMPANY

RECEIPTS.

September.			
	For interest on same.....	33 95	373 53
			$9,662 77
1860.			
Sept. 30	Balance of receipts on hand at date, per contra.....		$180 84

JAMES RIVER AND KANAWHA COMPANY

DISBURSEMENTS.

1860.				
September	This amount paid interest on same.....	40 43	403 73	1,211 48
	This amount, being balance as given in account of receipts on hand at date of last report, which upon an examination of the bank account, was found to be an error.....			82 99
	This amount to balance, now on hand in bank to the credit of the board, at date.....			180 84
				$9,662 77

E. & O. E.
Teste.

33 ALEX. T. LAIDLEY, Sec.

Opinion of Judge Summers on the Fifty-eighth and Fifty-ninth sections of the Tax Law of 1860.

SIR:

In reply to your enquiries, I am of opinion that the 58th and 59th sections of the act passed on the 30th of March, 1860, entitled an act for the assessment of taxes on persons and property, have no relation whatever to the improvement on the Kanawha River. Those sections embrace only railroad and canal companies engaged in the transportation of freight and passengers. The works and improvements of the James river and Kanawha company are of a mixed character. That corporation owns a canal, a turnpike road, and an open river navigation upon the Kanawha. So far as it is the proprietor of a canal, it is to be governed by the provisions prescribed for canal companies. So far as the Kanawha river is concerned, the corporation is not a canal company any more than it is a railroad company, because the owner of a turnpike. The duties, authority and liabilities of the company in each instance are to be ascertained by looking to the nature of the several distinct improvements constituting its line. The company, among other things, was charged with improving the navigation of the Kanawha river for the common use of all, with authority to demand a prescribed toll in compensation for that use. It was also required to construct and keep in repair a turnpike road from Covington to Big Sandy for the public travel, with right to take tolls for its use. The company is no more a transportation company in the one case than in the other.

Canal and railroad companies are required by the 58th section to report to the auditor, quarterly, "the number of passengers transported," and the "gross amount of freight received by such company for transportation of freight over

such road or canal." By the 59th section, such company is required to pay into the treasury, at the time of making its report, "for every passenger transported, a tax at the rate of one mill for every mile of transportation of each of such passengers, and of one-half of one per cent. for such gross amount received for the transportation of freight."

Now, upon the Kanawha river the company never has charged toll for passengers, nor has it ever received, or been authorized to receive, anything for the transportation of either freight or passengers. It has no means of furnishing the number of passengers. It is not engaged in carrying freight or passengers on this part of the line, but is merely the proprietor of certain improvements on a stream open to the navigation of the public, and for the use of which improvements it is authorized to take compensation in the form of toll, as upon a public highway. The company own no boats or vessels for transportation, and never did. The river is wholly navigated by others, owning their own boats and doing the entire carrying trade.

The sections referred to do not impose a tax upon tolls, but upon the amount received by the company for transporting passengers and freight.

I am of opinion that the Kanawha board is not required to make the report contemplated by the 58th section of the act referred to, and that the James river and Kanawha company is not liable to the taxes imposed by the 59th section, inasmuch as it receives nothing for the transportation of either freight or passengers.

Respectfclly, your ob't serv't,

(Signed) GEO. W. SUMMERS.

James L. Carr, Esq., President pro tem. of the Kanawha Board James River & Kan. Company.

A copy.

ALEX'R T. LAIDLEY,
Sec. Kanawha Board.

No. 21.

Articles of agreement, entered into this 15th day of May in the year eighteen hundred and sixty, between the James River and Kanawha Company, acting by and through James L. Carr, president pro tem. of the Kanawha board, of the one part, and Theodore D. Barton and Orville Robinson of the state of New York, of the other part:

1. Witnesseth, that the said Theodore D. Barton and Orville Robinson promise and agree to improve the Kanawha river from the foot of Loup creek shoals to the Ohio river, in conformity with the annexed specification and with the plans and profiles of the improvement, as exhibited by Engineer John A. Byers, and with such alterations thereof as may be hereafter adopted by the said Kanawha board, and to furnish all the materials and do all the work in a substantial and workmanlike manner, at the prices specified in their proposal to the Kanawha board, hereto annexed, which may be necessary and proper therefor, according to the specification, and of such quality as the engineer of said board may approve.

2. The said engineer, or his assistant by his direction, shall, as soon as practicable after the end of each month, make out an estimate of the quantity and value of each species of work done, pursuant to this contract, at the prices contained in the annexed proposal, and also of any extra work done in consequence of any alteration in the plan of the improvement, which may have been adopted by the said Kanawha board.

And it is mutually agreed between the contracting parties, that any estimate made and approved as aforesaid, shall be final and conclusive, unless objected to before payment, and within twenty days after it shall have been returned to the Kanawha board. In which case, the party objecting shall give notice to the other party in writing, stating the grounds of objection—and the board shall thereupon return the objections so made, together with said estimate, to the said engineer,

who shall immediately consider the matters of complaint, and make his report to the board in writing—which report shall be final and conclusive upon both parties, without further appeal; and the making and receiving payment upon any estimate to which objections may have been offered, shall be taken as evidence that such objections have been waived; and in like manner, the decision of the engineer upon any questions that may arise as to the meaning of this agreement, relating to work done by the contractors, shall be conclusive.

3. Within ten days after the return of any monthly estimate to the said Kanawha board, the amount appearing to be due for work done and materials furnished since the preceding estimate, less 15 per cent., shall be paid to the contractors in six per cent. registered stock of the commonwealth of Virginia, at par, as the same is authorized to be issued by the act passed the 23rd March, 1860: provided, however, that the said board shall not be required to pay out and deliver said registered stock in amounts larger than they are enabled to procure the same under the provisions of the said act. And no portion of the remaining 15 per cent. shall, under any circumstances, be paid, until this contract is fully fulfilled on the part of said contractors. But the said Kanawha board shall, on the certificate of the said engineer in writing, that any portion of the work is fully completed, receive such work so far as to relieve the contractors from further liability as to injury to this particular work, by high water of the river or otherwise.

4. Within thirty days after the whole improvement shall have been completed according to the true intent and meaning of this contract, a final estimate shall be made and approved in the manner provided for making and approving monthly estimates; and any objections thereto which may arise, shall be disposed of and finally settled as in the case of monthly estimates; and within thirty days after the adjustment of the final estimate, the balance due thereon shall be paid in the same manner, and with the same stock, and subject to the

same provisions as the payments are contracted to be made in the third clause of this agreement.

Time of Beginning and Completing.

5. It is mutually agreed between the parties to this contract, that the work on the aforesaid improvement shall be commenced within forty days from this date, and be prosecuted, without intermission, by such force as in the opinion of the said engineer will secure its completion on or before the 15th day of August, 1861; at which time it shall be fully completed and delivered up. And it is further agreed, that in case the work shall not be commenced and prosecuted and completed, or if the contractors, on being required thereto by the written order of the engineer, shall fail or refuse to increase the force employed in the improvement, to such extent as in the opinion of the said engineer shall be necessary to insure the completion in the stipulated time; or in case the contractor shall disobey the written orders of the engineer, or shall violate any of the conditions of this agreement, then on a certificate of the fact by the said engineer, either the president pro tem. or the president pro tem. and directors of the Kanawha board may declare this contract abandoned; and the said Kanawha board shall thereupon be exonerated from every obligation thence arising; and the reserved per centage on the contract price, as well as all materials furnished and work performed, upon which no estimate may have been made, shall be forfeited to and become the right and property of the Kanawha board; and the said board may thereafter agree with any other person or persons for the execution of the unfinished work, in the same manner as if this contract had never been made.

6. The contractors shall give their personal attention to the execution of the work hereby contracted for; and it is mutually agreed that this contract shall not be let or assigned, either in whole or in part, to any other person.

7. The said engineer shall have power to prescribe the manner of preparing for, beginning and conducting every species of work to be done under this agreement, with reference to its purpose and the durability of such work, and his instructions shall be promptly obeyed; and if he shall disprove of the quality of any work, it shall be the duty of the contractors, at their own expense, to take down and rebuild so much thereof as shall be disapproved of; and if the contractors shall neglect or refuse to take down or rebuild work so disapproved of, the engineer shall cause the same to be done at their cost.

8. It is understood and agreed that all orders given by an engineer, which shall cause an increase of diminution in the value of the work to be performed, shall be given in writing; and that when any claim shall be made by the contractors for extra compensation for work performed under such orders, the order shall be produced.

9. It is further understood, that in case of the death, resignation or absence of the engineer, the board may depute any other engineer to act in his place.

10. And it is mutually agreed between the parties to this contract, that all the terms and conditions therein expressed, as well as the terms and conditions contained in the annexed specifications and proposal, which are deemed and taken to be a part of this contract, shall be binding upon the parties respectively, according to their true intent and meaning.

In witness whereof, the said James river and Kanawha company have hereunto set their name, acting by and through James L. Carr, president pro tem. of the Kanawha board, and have affixed hereto the private seal of the said president pro tem. (the Kanawha board having no seal); and the said

Theodore D. Barton and Orville Robinson have hereunto set their hands and affixed their seals the said 15th day of May, A. D. 1860.

THE JAMES RIVER AND KANAWHA CO.
By JAMES L. CARR. (Seal.)
Pres. pro tem. of Kanawha Board.
THEODORE D. BARTON. (Seal.)
ORVILLE ROBINSON. (Seal.)

A Copy.
ALEX'R T. LAIDLEY,
Sec. Kanawha Board.

May 24, 1860.

Proposal to the Kanawha Board.

The undersigned hereby propose to improve the Kanawha river, according to the foregoing specification and plans of your engineer, and under his direction, at the following prices:

1. For solid rock excavation, per cubic yard	$3.00
2. For all other excavation, per cubic yard	.45
3. For borrowed stone for riprap, per cubic yard	1.5[illegible]
4. For materials for riprap, obtained from the excavation, per cubic yard	.30
5. For materials, other than riprap, obtained from the excavation and necessarily transported over two hundred feet, and put in dams, per cubic yard	.05
6. For oak plank, board m. at per M	15.00
7. For iron in the work, per lb.	.10
8. For timber in the work, per lineal foot	.16

The registered stock of the state of Virginia, as authorized to be issued by the act passed on the 23rd March, 1860, will be received at par, in payment for the above work.

The undersigned propose to complete the above work within fifteen months after the date of contract, or forfeit to the Kanawha board five per cent. on the whole amount of work embraced in this proposition.

THEODORE D. BARTON,
ORVILLE ROBINSON.

May 14, 1860.

Copy-Teste,
ALEX'R T. LAIDLEY,
Sec. Kanawha Board.

May 24, 1860.

Report of the Committee of the Stockholders, on the Books, Papers and Accounts.

The undersigned committee, charged with the duty of examining the books, papers and accounts of the James River and Kanawha Company, beg leave to report, that under authority of resolutions of the stockholders adopted on the 17th of December, 1839, and 27th of October, 1859, they have employed Mr. Thomas H. De Witt to make the examination required of them, and have received a report from him in the following terms:

"*To the Comimttee of the Stockholders on the Books, Papers and Accounts of the James River and Kanawha Company:*

Gentlemen:

I have under your instructions examined the books and accounts of the James River and Kanawha Company, from the 1st October, 1859, to the 30th September, 1860, inclusive, and now respectfully report, that I have entire confidence in the correctness of the various statements and accounts made by the company to the stockholders at the late annual meeting, having examined into every entry made in the day book, journal and ledger, and found them to agree in every particular. I examined into every source of income, either from tolls or other sources, and found them correctly entered to the credit of the company, and also the disbursements, and found them in all cases sustained by proper vouchers, which were carefully endorsed, regularly filed and preserved, and easy of reference.

The condition of the company on the 1st October, 1860, is as follows:

Balance to the credit of the company on the 1st October, 1859, in Bank of Virginia		$2,948.89
Balance in the Bank of Virginia at Charleston, 1st October, 1859		6,278.40
		$9,227.29
Amount received from tolls, rents and other sources during the year		655,557.58
		$664,784.87
Deduct		
Amount of warrants issued during the year ending 30 Sept., 1860	$644,295.18	
Amount of warrants afloat on the 1st October, 1859	9,765.51	
		$654,060.69
Balance on the morning of the 1st October, 1860, as shown by ledger		10,724.18
There were afloat on the same day of warrants issued and not presented at the bank		2,840.24
		$13,564.42
Balance per bank book of Bank of Virginia, 1st October, 1860		$7,286.02
Balance in Bank of Virginia at Charleston		6,278.40
		$13,564.42

All of which is respectfully submitted,

THOMAS H. DE WITT."

In addition to which, your committee find on a personal examination, that the books of the company's office are neatly kept, and the papers arranged in a manner favorable alike to their safe keeping and the dispatch of business.

SAM'L. MARK,
LEWIS D. CRENSHAW,
THOS. W. MCCANCE.

Richmond, December 1st, 1860.

SECOND AUDITOR'S OFFICE.

Richmond, Va., November 21, 1914.

I, Rosewell Page, Second Auditor of Virginia, do hereby certify that the foregoing is a true and accurate copy of that part of Document No. 17, found in volume *"Board of Public Works (Turnpikes) 1860,"* from page 224 to 296, inclusive, relating to The James River and Kanawha Company, which volume is in the possession of the Virginia State Library at Richmond, Va.

ROSEWELL PAGE,
Second Auditor of Virginia.

BOARD OF PUBLIC WORKS, ANNUAL REPORTS 1860.

DOCUMENT NO. 17, PAGES 272–3 AND 274–5.

Receipts and Disbursements (Table No. 18) of the James River & Kanawha Co. from its Organization to the 30th of September, 1860, Old Improvements and New Works in Operation.

RECEIPTS.

Income from Old Works:		
Old Canal, Kanawha Road, Kanawha River & Blue Ridge Canal	$793,345 55	
New Canal from Richmond to Buchanan	4,230,891 92	
Premiums and Interest on State Loans, etc	59,893 48	
Bridge Tolls	2,159 83	
North River Tolls	516 23	
Richmond Dock Income	332,209 35	
Five Locks, Tide Water Connection	15,426 99	
Total Income		$5,434,443 35

Bills Payable	$152,055 12	
Insurance on New Canton Bridge	10,000 00	
Capital Stock, Original, net	3,931,330 71	
Capital Stock, Preferred	7,400,000 00	
Release of State Liens	360,214 44	
State Stock for Kanawha Improvements	40,000 00	
Sale of Land	28,484 46	
Total other Receipts		11,922,084 73
		$17,356,528 08

DISBURSEMENTS.

Repairs and Maintenance of Old Canal from Richmond to Maidens Adventure, Kanawha Road & River & Blue Ridge Canal, Road & Ferry	$411,712 97	
Repairs and Maintenance of New Canal from Richmond to Buchanan	1,900,227 64	
Additional Charges to Revenue:		
Annuity to the Old James River Co	517,500 00	
Dividends on Guaranteed Loans	1,390,740 81	
Interest on State Loans	1,870,032 83	
Interest on North River Navigation Co. Bonds	80,590 57	
Interest on Bills Payable	11,684 75	
Interest on Auditors' Certificates	106,396 18	
Other Interest and Discount	121,164 59	
Expenses of General Administration of Company	177,642 46	
Repairs to Richmond Dock and Five Locks	79,887 51	
State Tax	1,374 77	
Loss by General Hamilton Agency	63,820 45	
Other Losses	4,623 57	
Total Charges to Income		$6,737,399 10

Construction	$9,482,484 46	
Principal of Annuity, Old James River Co	350,000 00	
Dividends of the James River & Kanawha Co	11,599 59	
Certificate to the State Auditors	672,009 60	
Total other Disbursements		10,516,093 65
Cash Balance at September 30, 1860	$106,258 02	
Less Past Notes Afloat	3,222 69	
		103,035 33
		$17,356,528 08

I hereby certify that the figures in this Schedule were taken by me from the Annual Report of the James River & Kanawha Co. for the fiscal year ended September 30th, 1860, and that they are grouped to display the total Receipts for revenue and the Disbursements for maintenance, upkeep, expenses and interest. These figures show that at September 30th, 1860, there was a deficit of not less than $1,302,955.75 without making any allowance for depreciation on the Company's property.

A. G. POTTER.

JAMES RIVER & KANAWHA COMPANY.

Receipts and Disbursements for Four Years: October 1, 1859, to September 30, 1863, taken from Printed Volumes of Annual Reports of the Company in the Possession of the Chesapeake & Ohio Railroad Company at Richmond, Virginia.

RECEIPTS.	September 30, 1860.	September 30, 1861.	September 30, 1862.	September 30, 1863.
Revenue.				
Dock	$50,128 03	$20,415 46	$5,389 42	$9,966 04
Canal	238,991 27	133,434 22	128,765 15	286,068 35
North River Canal			2,103 26	3,943 87
Southside Connection	425 00	218 75	75 00	425 00
Blue Ridge Turnpike & Ferry	217 27	96 95	287 83	172 02
North River Bridge	450 00	182 77	249 06	213 15
Kanawha Road	8,818 48	5,523 52	6,321 12	1,655 53
Kanawha River	9,864 28	675 96		
	$308,894 33	$160,547 63	$143,190 84	$302,443 96

Interest	2,587 84	1,972 01	1,969 30	11,333 81
Bills Payable		19,627 62	90,869 62	130,000 00
Amounts Refunded	1,078 76			
Property Sold	4,500 00		1,000 00	60,924 81
State Loan (for Interest)	132,429 30			
Original Capital Stock	43 60			
New Capital Stock	7,400,000 00			
State Release	360,214 44			
State Loan for Kanawha River	40,000 00			
	$8,249,748 27	$182,147 26	$237,029 76	$504,702 58
On hand 1st October, 1859	20,286 98	106,258 02	58,048 11	105,277 17
	$8,270,035 25	$288,405 28	$295,077 87	$609,979 75

DISBURSEMENTS.

Dock	$7,721 52	$18,094 04	$1,286 84	$1,960 74
Tidewater Connection	842 07			
Canal	138,099 03	163,457 57	143,154 58	355,315 85
Southside Connection	2,009 43	1,090 78	317 50	
Rivanna Connection	2,051 52			
Blue Ridge Turnpike & Ferry	755 26	1,051 60	973 59	1,146 50
North River Improvements	28,025 55	16,594 97	24,515 05	12,432 64
Kanawha Road	9,413 15	4,716 90	6,192 44	2,281 65
Kanawha River	2,116 24			275 00
Kanawha River Improvements	28,407 80	1,098 74		
	$219,441 57	$206,104 60	$176,440 00	$373,412 38
Interest on Bonds and Notes	39,067 42	14,356 45	11,449 25	13,981 30
Interest on Bond to State	1,280 00		563 85	
Interest on Guaranteed Bonds	132,579 30			
Interest on North River Bonds	13,200 17	8,985 73	798 85	41,371 62
State Tax	1,374 77	904 69	548 75	2,714 91
Dividends		5 70		
	$406,943 23	$230,357 17	$189,800 70	$431,480 21

DISBURSEMENTS—*Continued.*

Brought forward	$406,943 23	$230,357 17	$189,800 70	$431,480 21
Bills Payable	196,619 56			77,802 79
State of Virginia Debt	5,790,214 29			
Interest	1,301,500 15			
Principal of James River Annuity	350,000 00			
Annuity	118,500 00			
	$8,163,777 23	$230,357 17	$189,800 70	$509,283 00
Balance 30th September	106,258 02	58,048 11	105,277 17	100,696 75
	$8,270,035 25	$288,405 28	$295,077 87	$609,979 75

Richmond, Va., November 20th, 1914.

THE DEPOSITIONS OF JOHN L. WILLIAMS AND OTHERS, taken by consent of parties, by counsel, this 20th day of November, 1914, at the office of H. T. Wickham, General Counsel of the Chesapeake & Ohio Railway Co., First National Bank Building, Richmond, Virginia, to be read as evidence in behalf of the plaintiff, before SPECIAL MASTER CHARLES E. LITTLEFIELD, in a certain suit in equity pending in the Supreme Court of the United States, wherein the COMMONWEALTH OF VIRGINIA is plaintiff, and the STATE OF WEST VIRGINIA is defendant.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Of Counsel for Plaintiff;

Hon. A. A. Lilly, Atty-Genl.,
Hon. John H. Holt,
Of Counsel for Defendant.

JOHN L. WILLIAMS, being first duly sworn, deposes and says, as follows:

Examined by Mr. Anderson:

1 Q. Please state the facts within your knowledge with reference to the firms of John A. Lancaster & Son and Lancaster & Co.; whether those firms, or either of them, were in business in the city of Richmond, Virginia, before and during the war between the United States and the Confederate States; and, in respect to sales of stocks and bonds by said firms, as to whether any reports of such sales were made and published by said firms in the Dispatch newspaper of the city of Richmond; and as to what credit was given to such published reports by the business community in which they were published.

A. I have known the firms of John A. Lancaster & Son and Lancaster & Co., bankers and brokers, of the city of Richmond, for the period of fifty-six years. I was a clerk in the firm of Lancaster & Son, and subsequently, during the civil war and afterwards, was a member of the firm of Lancaster & Co. In particular I know the fact that the firms of Lancaster & Son and Lancaster & Co. furnished accurate market reports of sales of railroad stocks and bonds before, during and after the period of that war. I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch, a reputable newspaper published in the City of Richmond before, during and after that war, and that the market reports of such stocks and bonds, so published, were recognized and accepted by the business community and relied on accordingly. And, generally, I know that John A. Lancaster & Son and Lancaster & Co. made the sales reported by them therein in the course of their business, at the prices stated.

Cross-Examination by Mr. Holt:

1. XQ. Mr. Williams, do you know who composed the firm of John A. Lancaster & Son, in the year 1860?

A. In 1860? Mr. Robert A. Lancaster, Mr. Philip J. Wright and myself. Oh, 1860, John A. Lancaster (old Mr. Lancaster) was the senior partner, and Mr Robert A. Lancaster—they were the only members of the firm of John A. Lancaster & Son.

2 XQ. That was in 1860?

A. Yes.

3 XQ. When did you become a member of the firm?

A. I rather think it was about 1863; it was not long before I got married, in 1864. About '63, I reckon.

4 XQ. Do you recollect what time in the year '63 you became a member of the firm?

A. Now you are getting too hard for me. It was sometime in the year '63.

5 XQ. You do not know what month?

A. No.

6 XQ. Was it in the early part of the year, or in the latter part of the year?

A. Now, you are a little too hard for me; that has been about sixty years—about fifty or sixty years ago, and I can not recollect exactly the time. It was sometime during the year 1863, I rather think possibly the middle of the year.

7 XQ. You don't know whether it was in the spring, summer, autumn or winter of '63, do you?

A. What are you after, please, sir? I was in the concern as confidential clerk, acquainted with everything that they did; Mr. Lancaster was an intimate friend of mine—an old school friend—and in the course of our business he took me in with him, but what month it was I do not know; I know it was before I was married, some time. I was married in 1864.

8 XQ. But you don't know whether you became a member of the firm of Lancaster & Co. in the spring, summer, autumn or winter of '63?

A. No, sir. My impression is that it was possibly about the middle of it, may be; that is my impression.

9 XQ. That would be in the middle, would it, Mr. Williams?

A. Yes.

10 XQ. And after you went into the firm who were its members?

A. Mr. Lancaster, Mr. Philip J. Wright and myself I think were all; nobody else.

11 XQ. What had become of the son?

A. Sir?

12 XQ. What Lancaster was it?

A. Robert A. Lancaster; the old man died in 1860, I think, and Mr. Lancaster ran the concern as John A. Lancaster & Son until Mr. Wright and myself became partners.

13 XQ. When did you first go into the office of John A. Lancaster & Son, as a clerk, before you became a partner?

A. I rather think it was in 1858.

14 XQ. How old were you then?

A. Let me see—I was born in 1831; you can make the calculation for yourself—that would make my age 27, would it not?

15 XQ. What were your duties with respect to making market reports to the newspapers? Did you have anything to do with that in the year 1860?

A. Well, my impression is rather that after 1860, that may be I furnished most of the reports. I rather think I did.

16 XQ. Did you furnish the alleged market reports for the Richmond Dispatch, of that firm, in the year 1860?

A. I rather think I did, sir. Whatever went there was with the knowledge of all who were there; it had the approval of all the members of the concern, and clerks. We did our best to tell the truth.

17 XQ. How often did John A. Lancaster & Son publish market quotations of stocks and bonds, in the Richmond Dispatch, during the year 1860?

A. You can see from the paper itself; I rather think it was day to day; that is my impression.

18 XQ. Was that a daily paper, Mr. Williams?

A. Yes.

19 XQ. And your recollection is that you published daily market reports?

A. I think so; that is my impression.

20 XQ. Did you have any stock Exchange in the city of Richmond at that time?

A. I rather think that the Stock Exchange was formed after the war. That is my impression. I think the stock board was made after the war; but Lancaster & Co. were the leading bankers and brokers of the city.

21 XQ. Where would you get your information in making up these stock reports? What would you base it on, if there was no Stock Exchange here at that time?

A. On absolute sales of our own; we kept a record; we were thoroughly acquainted with the market; it was our business to know the prices, and our business to keep up with the market, and as intelligent and conscientious brokers we gave those reports, sir.

22 XQ. What did you base the reports on?

A. On my own ears and sense, that is about all I can say —and observation.

23 XQ. Well, suppose a share of stock in the Richmond, Fredericksburg & Potomac Railroad Company was sold on January 1st, 1861, would you make any report of that?

A. On January 1st, 1861?

24 XQ. Yes.

A. Some of these were actual sales, and some of them were what we regarded as the true market price, on our own judgment.

25 XQ. How would you make up your judgment on that?

A. By the use of my mind; that is all I know; I do not know of anything else.

26 XQ. I know, but your mind operates on facts, when you use it?

A. Yes, sir, that of a conscientious man does.

27 XQ. On what kind of facts would you base that judgment?

A. Actual transactions, and acquaintance with the institution itself.

28 XQ. What institution?

A. The corporations, whatever they were—sometimes Richmond, Fredericksburg & Potomac, sometimes Richmond & Petersburg, and sometimes others—knowledge of the business of the concerns and how they were going on. Gracious mercy!

29 XQ. Did you make all the sales of stocks of these various companies, through the brokerage firm of John A. Lancaster & Son?

A. Did I, individually?

30 XQ. No, did that firm?

A. Did we make what?

31 XQ. In the year 1861, did anybody make any sales of stocks here, except Lancaster & Son?

A. My impression is that we did almost all the business.

32 XQ. There was no other brokerage firm that dealt in those stocks?

A. Maury & Co.; but I do not think they did anything like as much business as we did; we were pretty much recognized as the leading brokers of the place.

33 XQ. What was that other firm you named?

A. R. H. Maury & Co. was the name of a firm here—but you are asking me to go away back yonder and tell you of matters between fifty and sixty years ago.

34 XQ. But I didn't bring you here; you have undertaken to testify about it, and I want to see what your recollection is, in a fair way. Now, then, when you would make a market report you would base it on sales, would you?

A. Upon sales, and upon my knowledge of the market.

35 XQ. Would you go and inquire of the other brokerage firms what they had been selling, before making your market quotations?

A. No, indeed; I do not recollect any other brokers, except the Maurys, at that time.

36 XQ. Then you think that in 1861 there were only two brokerage firms—one was John A. Lancaster & Son, and the other was R. H. Maury & Co.?

A. Yes.

37 XQ. Well, if you were to make a sale of five shares of stock in any company, on the 1st day of the month, would you utilize that for the purpose of putting a market quotation in the newspapers upon the value of that stock?

A. If I made an actual sale, whether it was more or less—whatever the sale was, small or great, we would quote it.

38 XQ. When you would quote it, how would you quote it? Suppose a man would bring into your firm 100 shares of Richmond, Fredericksburg & Potomac stock, to sell, and you would sell it at a certain price on the first day of January, 1861, and that was the only sale that your firm had made, what market quotation would you give on that stock?

A. That at which I had made the actual sale.

39 XQ. Would you report the sale, or would you report a market price for that stock based on that sale?

A. Both, I reckon.

40 XQ. Is that the way those reports were made up?

A. They were made up by intelligent and conscientious gentlemen, of good judgment and experience; as honorable men, and knowing our business, we gave those quotations. Now that is about as much as I can tell you if you were to ask me one hundred and fifty more questions.

41 XQ. No, I don't want to ask you any more than I think necessary; because it is not pleasant to me, any more than it is to you. Suppose you made, we will say—this is

illustrative—on the first day of January, 1861, sale of 100 shares of Richmond, Fredericksburg & Potomac stock; that is, suppose John A. Lancaster & Son did that. Now, suppose you sold it at par. Then, when you would put into the Richmond Dispatch a market quotation on that stock, you would quote it as selling at par?

A. As an actual sale. I will tell you: Lancaster & Son were accepted in this town as about the best authority on the prices of stocks; we were consulted on that subject.

42 XQ. That's all right, but I want to see whether they deserved that reputation, or not; that is all—doubtless they did.

A. I would presume that is a fact you would like to know, what our reputation was, would you not? I will swear to it.

43 XQ. We understand that, but we are asking for illustrative purposes. On the 1st of January, suppose stocks were put into the hands of John A. Lancaster & Son, for sale, and we will suppose that those stocks consisted of 100 shares of Richmond, Fredericksburg & Potomac Railroad Company's stock, and on that day you would sell those 100 shares at par, and those were all the sales you had. Now when you made out a market quotation for the Richmond Dispatch, or the newspapers, after that, what would your market quotation be?

A. Exactly what we had made the sale at.

44 XQ. That would be at par, would it not—$100 a share?

A. Yes.

45 XQ. Now, would you do that regardless of what R. H. Maury & Co. had sold stock at?

A. Entirely; we rather thought we knew more about the value of stocks than they did.

46 XQ. But you did not base your market quotation upon your judgment, but upon the stock sales you had made. Now, suppose in the meantime Davenport & Co. were——

A. They were not in existence at that time, I believe.

47 XQ. When did they come into existence?

A. I think it was after the war.

48 XQ. Now suppose R. H. Maury & Co., or whatever the name of the firm was, was selling stock at the same time, you would make a market quotation based upon the sale your firm made?

A. Yes.

49 XQ. Regardless of what Maury & Co. might have been selling them at?

A. Entirely, I think.

50 XQ. You didn't know whether Maury & Co. had sold the same stock at a greater price, or not?

A. We regarded ourselves as better authority on the value of stock, than Mr. Maury.

51 XQ. That may be true, but the question is what were those stocks bringing in the market. The question is not what your judgment was, but what those stocks were bringing in the market. Now you would go and make that market quotation regardless of what Maury & Co. might be selling them at?

A. Entirely so, sir.

52 XQ. Now, if Maury & Co. had sold stocks for more than you sold them in the market, that would not affect your market quotations, would it? They would be based upon the sales made by you?

A. I think not. You have stated an entirely hypothetical and possible case. Let me tell you—if you want to know all I know about this thing I will tell you; we were the best authorities, we gave the quotations of actual sales, and when we gave the quotations they were what we believed to be the true value of the stocks.

53 XQ. Well, now, I understand you. There were other people in the same business as yourselves, in the city of Richmond, at that time?

A. I think that Maury did very little of it.

54 XQ. I am not asking about the quantity they did, I am asking you concerning the fact whether or not there were other people in the same business at that time?

A. I don't think there were any others, except the Maurys.

55 XQ. I say, Maury was in the business at that time. You think there were two firms—R. H. Maury & Co. and John A. Lancaster & Son?

A. Yes, that is my impression

56 XQ. And they were both selling stocks, were they not?

A. Observe, now—

57 XQ. Well, answer my question: were they both selling stocks?

A. You must let me answer, please—

58 XQ. Were they both in the same business?

A. My impression is that the Maurys did very little of that business.

59 XQ. I am not talking about the quantity, I am talking about the character of the business. Were R. H. Maury & Co. and John A. Lancaster & Son in the same business? Were they both stock brokers?

A. That is my impression. I think the Maurys were chiefly money brokers.

60 XQ. Well, were both firms selling stocks in the market?

A. I think so, sir.

61 XQ. They were—and at the same time?

A. I think so, sir.

62 XQ. And that was in the years 1860 and 1861?

A. I rather think so; that is my impression.

63 XQ. And perhaps earlier and later? Well, now, when you would make a market quotation for the Richmond papers, you would base it upon the sales made by you, regardless of any sales that might be made by Maury & Co.? You would pay no attention to those sales, would you, of the same stock?

A. I never inquired of them what they had done; and not only that, I suppose they would keep their business to themselves.

64 XQ. Now you had no stock exchange at the time?

A. I think not .

65 XQ. You might get a better price for stocks, sometimes, then Maury & Co., might you not?

A. Yes.

66 XQ. And they might get a better price for the same stocks, sometimes, than you might get?

A. Not likely, sir.

67 XQ. I know, but would you know whether they would, or not?

A. What you are asking me is, whether we knew Maury's business and kept up with Maury's business, and whether I would consult them in the management of my business? I will tell you what, we knew so little about it—we knew the value of property and sometimes would buy stock from them and sell it at what we believed to be the market price; our customers depended on our judgment. Lancaster & Co. were the authorities and were most depended on by the capitalists of this place. I think that with the Maurys, their stock business was a secondary part of their business; that is my impression.

68 XQ. That may be. Then I will ask you this question: did you keep up with the sales of stocks made by Maury & Co.?

A. No, we didn't make any inquiry, or know anything about them.

69 XQ. You didn't know what prices they got?

A. No, sir.

70 XQ. You didn't know whether their prices were greater or less than what you got?

A. We had nothing to do with their business.

71 XQ. Answer my question: do you know whether their prices were greater or less than what you got, for the same stocks?

A. I would like to know how I was going to know.

72 XQ. You can say whether you did know?

A. I did not know.

73 XQ. That is all we are trying to get at. Now, then, there was more than one firm engaged in the sale of stocks in Richmond in the years 1860, '61, '62 and '63, and any market quotations that were published in the Richmond papers at the time, by John A. Lancaster & Son, were based upon their own experience, regardless of what the other brokerage firms were doing?

A. Yes, sir.

74 XQ. There was no stock exchange, I believe you have stated, at that time? That was established after the war. All stocks were sold at private sale, either by the buyer and seller themselves, or individual brokerage firm?

A. I think we did almost all the business, or most of the business that was done. I think it was a mere incident to the Maurys'.

75 XQ. Well, now, suppose this case, Mr. Williams. Suppose you would make a sale of Richmond, Fredericksburg & Potomac stock on the 1st of January, and you would make no more sales of that stock until the 1st day of July, 1861, and yet you were publishing daily quotations. What would you base those quotations on?

A. We would put there, always, in those cases, last sales. Look at them and you will find them designated as "last sales."

76 XQ. Would you give the date of the sales, however?

A. The last sales?

77 XQ. Yes.

A. No, indeed, it would remain in the stock list, last sales.

78 XQ. You would not in the stock quotation give the date of the last sale?

A. No.

79 XQ. Therefore, a man who would look at a stock quotation as published by you on the 1st day of July, 1861, based upon the last sale, could not tell from the quotation whether

that sale had been made the day before, or twelve months before, could he?

A. I reckon not; if he wanted to, he could look back at the papers and see how long it was there; he would have to look back at the paper to see when the last sale was.

80 XQ. And if the papers carried him back a year, he would have to go back to that?

A. If he wanted to go back to the last sale.

81 XQ. Then, I understand whenever a sale was made by John A. Lancaster & Son, you would carry that as the quotation of the stock until the next sale was made?

A. Yes, sir, we would have it on the last sale.

82 XQ. You would base it on the last sale, and that quotation would stand until the next sale was made, is not that a fact?

A. Certainly.

83 XQ. And if that were in six months or a year, it would not make any difference?

A. No, sir.

84 XQ. Because it was based on the last sale?

A. Yes, sir.

85 XQ. Well, then, if on the 1st day of January, 1861, you had a market quotation in the Richmond Dispatch on stock, based on the last sale, from that paper alone—without running back to the last sale—you could not tell whether that was based on a sale made in 1861, or '58 or '59, could you?

A. You could use your own judgment about that. What do you think about it?

MR. HOLT: Well, my judgment would be that you could not.

WITNESS: I would like very much to know what I am here for, because you are asking me a great many questions that really make me just the least bit impatient. I am trying to tell you the truth, the whole

truth, and nothing but the truth—and all about it. I have told you that Lancaster & Co.——

86 XQ. I mean, Mr. Williams, that the paper, itself, showing a market quotation, would not show the date of the last sale?

A. Of course not.

87 XQ. And when you did run it back it would simply be a sale made by John A. Lancaster & Son, would it not?

A. Very likely.

88 XQ. And regardless of sales made by anybody else?

A. Very likely. We were unquestionably the authorities on those values, during all that time.

89 XQ. I noticed, Mr. Williams, that when our friends propounded to you the first and only question they asked you, that you read your answer from a paper?

A. Yes, I did. I read it from this paper. (Witness indicates paper.)

90 XQ. Will you let me see the paper?

A. Yes, sir. (Witness hands the paper to counsel.)

91 XQ. Who prepared this paper that you read in response to their question?

A. I rather think that Major Anderson made it up out of my last testimony.

92 XQ. Do you know who put it through the typewriter?

A. I do not.

93 XQ. It is in typewritten form?

A. Yes.

94 XQ. Did you have it typewritten, or was it handed to you in that shape?

A. It was handed to me in that shape.

95 XQ. By whom?

A. By Major Anderson, I think.

96 XQ. By Major Anderson you mean counsel in this case?

A. I do mean so, sir.

97 XQ. The former Attorney-General?

A. Yes, sir.

98 XQ. You state in the second paragraph of this typewritten answer, as follows: "In particular I know the fact that the firms of Lancaster & Son and Lancaster & Co. furnished accurate market reports of sales of railroad stocks and bonds before, during and after the period of that war."

A. That is my recollection, sir.

99 XQ. Do you know whether the market reports furnished by them prior to January 1st, 1861, were correct? Do you have any personal knowledge on the subject?

A. I have no doubt about them.

100 XQ. I know, but have you, Mr. Williams, any personal knowledge on the subject?

A. I was clerk and book-keeper there, and knew everything that was done.

101 XQ. That was before you became a member of the firm?

A. Yes, sir. Mr. Lancaster and myself were old schoolmates and college-mates, and on the most intimate terms.

102 XQ. You were examined as a witness in this case up at the Supreme Court rooms some weeks ago, were you not?

A. I think so, yes.

103 XQ. Were you not at that time asked concerning these same market reports the following question: "Do you know anything as to the correctness of those?" and did you not make this answer: "No doubt if they are in the papers they came from our concern." Question: "Do you know anything as to their correctness?" Answer: "No, sir." Were not those questions asked you, and did you not make those answers?

A. I don't know how they got there. Look here, you are asking me these particulars of sixty years ago, and I answer the best I can. Now, I have no manner of doubt that I was thoroughly familiar with them. As for catching me telling a story, that is another question—that raises another matter.

I don't know exactly whether that was my reply, or not; I am not prepared to say that is was, because in answering questions I qualify everything. I am trying to tell you the truth. I tell you now, whatever I said then, the fact of the business is, I think, my impression is that I must have. As for swearing to the quotations exactly as they were, that is another question. You are asking me to tell you about figures of sixty years ago. I tell you that I was informed of everything that went on in the concern, and that being so, that all the quotations came under my observation, and were certified by me. My impression is now, really, that they would have to pass under Mr. Lancaster's own eye first; he was the head of the firm —I was a clerk, so I was not responsible; Mr. Lancaster was responsible for them. But I have no manner of doubt that they were correct. Without being able to say positively about my information, I have no manner of doubt that they were correct. This thing of being catechised about whether I am telling the truth, is not a thing I am at all used to, and am very restive under it.

104 XQ. Do you know anything about the reports of Davenport & Co., of stock quotations published in the Richmond newspapers in the years 1860, 61, '62 and '63?

A. I have no recollection of them.

105 XQ. Do you know whether or not they made any market quotations in those years, in the Richmond papers, on stocks and bonds?

A. I really do not recollect.

106 XQ. Do you know whether or not Davenport & Co. caused any market quotations to be published in the newspapers of the city of Richmond in the years 1860, '61, '62 and '63?

A. I do not recollect.

107 XQ. Now, in the paper I now have before me, that you read a moment ago in response to my friend, Mr. Anderson's question, you say this: "I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and

bonds to be published in the Richmond Dispatch." Did you not read that statement into the record, Mr. Williams?

A. If I stated so, it was my recollection at the time, but I really do not recollect about that; when I referred to the general fact of reputable concerns, I do not recollect that Davenport & Co. were in existence at that time—but it has been a very long time ago. Why, is not this later on than '60,'61, '62 and '63? Davenport & Co. did not come in existence until afterwards. You are making me swear that Davenport & Co. were in existence in 1861, '62 and '63. I do not recollect that they were; I refer to them afterwards. My impression is that they did not come into existence until after the war. I do not say that Davenport & Co. were in existence during the war.

108 XQ. Didn't you state a moment ago, in reply to the first question that was asked you, that during and after the war Davenport & Co.——

109 XQ. Davenport & Co., yes.

109 XQ. Davenport & Co., yes;?

A. Or after the war, Davenport & Co.? Davenport & Co. were after the war. Things are a little mixed there, that is all—and not during the war—when I used the expression—I have been trying to tell you the truth, now, and you are trying to put me in a bad fix. If Major Anderson put it in the wrong way he is responsible for it, and not I. You are trying to make me say that Davenport & Co. were in existence during the war. Now, I do not recollect that they were. When I read that thing——

110 XQ. I will repeat my question: Did you not, in response to Major Anderson's question, answer from the paper you handed me a moment ago, that Davenport & Co. caused market quotations of stocks and bonds to be published in the Richmond Dispatch during and after the war?

A. Let me see that, please, sir. We have got to take care of ourselves here.

MR. HOLT: That is right.

WITNESS: (Reads) "I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch, a reputable newspaper published in the city of Richmond before, during and after the war." Well, some of them did, and some did not. Davenport & Co. did not come into existence until afterwards. You change the thing to please. I do not say Davenport & Co. were in existence during the war; I do not think they were; but Lancaster & Co. and Davenport published their sales, some of them during the war, and some of them afterwards. Now, just put that in, please—some of them during the war and some of them afterwards.

111 XQ. I have not changed the paper at all; I have simply read from the paper you handed me; it speaks for itself, of course. Now, when did you first see this paper that you read as your answer to the first question propounded to you?

A. Oh, I read it down at the office. That especially struck me, about that, but I thought it was just a general statement covering the whole case.

112 XQ. You say "at the office"; where is the office? What office do you mean?

A. At the corner of 8th and Main Streets.

113 XQ. How far is that from here?

A. It is about a square.

114 XQ. When did you first see this paper?

A. I rather think it was this morning. But you understand, now, let me tell you, I read that thing not carefully; it was a general statement that Lancaster & Co., during the war, and before the war, and Davenport & Co. after the war, published these quotations; it covers the whole case, and so I regarded it. If you mean to say you discredit my testimony,

sir, we had just as well stop now. This statement was made as a general statement, and as far as my stating that Davenport & Co. were in existence during the war, I am either an imbecile or else I told a story; now, let us put it on one of those horns, please. I am trying to tell you the truth, and exactly how things were. My impression is that Davenport & Co. did not come into existence until after the war; but Major Anderson put them together—not being familiar with the facts, he lumped them all together; some of them were before the war, and some afterwards. That is the way I read it and so understood it, and so signed it; but I did not mean to say that Davenport & Co. were in existence before or during the war. If you want to discredit my evidence, why, discredit it and let it go for what it is worth. I am a little out of patience under this thing, because I have tried to tell you the truth, and nothing but the truth. I will tell you again, that Lancaster & Co. were authorities on the values of stock before and during the war; they gave these quotations, and were pretty much accepted as authorities on those questions; and there were others—probably Maury & Co. after the war, and I think there was another, D. T. Williams & Co., after the war.

115 XQ. Have you examined the files of the Richmond Dispatch?

A. No, sir.

116 XQ. For the years 1860, '61, '62, '63, for the purpose of ascertaining the market quotations furnished by Lancaster & Son to that paper, for those periods, on any stocks?

A. No, sir.

117 XQ. Have you looked at the market quotations furnished by John A. Lancaster & Son to the Richmond Dispatch, on Richmond, Fredericksburg & Potomac Company stock, of November 2, 1860?

A. No, sir.

118 XQ. Or the same quotations furnished by them to the same paper, on the 9th of November, 1860?

A. No, sir.

119 XQ. Or on December 14th of the same year?

A. No, sir.

120 XQ. Or on January 4th, of the year 1861?

A. No, sir.

121 XQ. Have you examined the market quotations as furnished by John A. Lancaster & Son to the Richmond Dispatch, involving either the Richmond, Fredericksburg & Potomac Railroad Co., Virginia Central Railroad Company, or the stocks of any other company, for the years 1860, '61, '62 or '63?

A. No.

122 XQ. Now, Mr. Williams, we will ask you to file as a part of your deposition, the paper that you read from, in response to Major Anderson's first question.

A. You have raised that question about Davenport & Co. being here. I do not recollect that they were here during the war, but afterwards they were, and when I read it, it was having reference more especially to during the war—Lancaster & Co. and any other brokers; I do not recollect any others except Maury; I do not recollect that Davenport was here then. I am told now that Davenport & Co. were in business here then—I do not recollect it. Do you want me to say here that Davenport & Co.——

123 XQ. No, all I ask you, Mr. Williams, is to do this: I will put the question in this shape: Will you please file, as a part of your deposition, the paper from which you read your answer to Major Anderson's first question, and mark said paper "Exhibit No. 1?" The question calls for an answer "yes" or "no." Will you do that?

A. What was that question you asked me and made me answer "yes" or "no" to? What was that?

124 XQ. I do not recall what question you refer to, Mr. Williams. My question now is, will you file this paper I have referred to, and mark it "Exhibit No. 1?"

A. Yes. What was that question you made me answer "no" to, at the last examination?

125 XQ. That was on page 877.

A. I don't think the reporter reported me right on that; it was about those quotations; the "yes" or "no" was about figures and facts. That is no way to do, gentlemen, I assure you it is not. I am a witness, but I have my rights as an American citizen, not to be trifled with; that is all.

MR. HARRISON: They have no idea of trying to impeach your testimony, Mr. Williams; it is only to test your memory.

MR. HOLT: We are not going to quarrel with you, at all; but we want to test your memory.

WITNESS: Well, for you to throw off these insinuations and intimations, and then to tell me that you do not mean anything by it, is not the way to do, according to my understanding. I am a lawyer myself, and have some knowledge of the way things are conducted, but I have never yet come to the point where I could submit to being brow-beaten.

MR. HOLT: I do not blame you for that, because I am opposed to it myself.

WITNESS: Well, it is far from pleasant.

126 XQ. Well, now, Mr. Williams, why did you read your answer to Major Anderson's question, instead of answering it off-hand?

A. Don't you know that sometimes—I relied entirely on Major Anderson's memory and upon his judgment, believing that he was trying to put down there exactly what was the truth, and I took the best view of what he said about the brokers—that that is what he meant. As I understand, there is a principle of law that if there are two ways of understanding a thing, if a man means to be honest, and if you know he means to be honest, you must take him as honest. Now, I took the right view of Major Anderson's statement. Is not that law?

127 XQ. Then if I understand you, Mr. Williams, you felt that you were unable to give a reliable oral answer, without a written preparation beforehand?

A. I thought that Major Anderson meant that expression, with reference to the different brokers, as covering before and after the war, without the succession in which they are written.

128 XQ. I am not referring to Davenport & Co. alone—that part of the answer—but I am referring to the whole written answer.

A. That was, I was perfectly satisfactory to do; I let it go. I know what I meant. If anybody chooses to misunderstand it, and think I meant to tell a story, they can make the most of it.

129 XQ. Then you relied upon Major Anderson rather than upon yourself, did you not?

A. Why, we were together. Rather than upon myself?

130 XQ. Yes.

A. What use is there of asking me that sort of question? I was dealing with a gentleman who tried to do his best. I am not an idiot nor an imbecile. I read it, and I thought that is what was meant.

MR. HARRISON: He is referring to Davenport & Co. now, altogether.

MR. HOLT: Yes, I understood him to mean that.

131 XQ. What I want to get at is this: you had the question propounded to you by Major Anderson, and instead of answering it off-hand as you are answering my questions now, you took a written answer that had been prepared theretofore to that question by Major Anderson. Now, you did that, as I understand you, because you would rather rely upon him to make the answer, than upon yourself; is not that the fact?

A. Not at all. I relied upon him as trying to express, and coming pretty near the expression of what was the fact—very close to the expression of the absolute facts.

132 XQ. Could you not have expressed it without his assistance?

A. Why, yes. I came here with the understanding that I was to be occupied two minutes, and here I have been kept—I don't know that I was ever subjected to a much more uncomfortable questioning in any matter, and one in which I took less interest.

133 XQ. How many times have you read that paper that you gave here as your answer to his question?

A. I could not tell you.

134 XQ. Could you repeat its contents now?

A. Verbatim?

135 XQ. Not verbatim, but substantially.

A. Why, yes.

136 XQ. I wish you would try and do it, please. I don't want you to read it, but to give its substance, while I hold it. Can you now give the stenographer the substance of that paper that you read as your answer to Major Anderson's question?

A. Well, I state there that I have known the firms of Lancaster & Son, and Lancaster & Co. for —— 58 years, was it? that I was a clerk with Lancaster & Son from about 1858; that I was made a member of the firm of Lancaster & Son, I think in the year 1863—it was certainly somewhere about that time; that Lancaster & Son and Lancaster & Co. were in the habit of publishing quotations, regular quotations, I think, from day to day; that we would give actual sales; that when there were no original sales we would give the last sales; that when actual sales were made, the actual sales were reported. I would like to put in also that Lancaster & Co. were the accepted authorities—that the concern of old Mr. Lancaster and his son, and the firm of Lancaster & Co., were accepted as the leading authorities on stocks and bonds. Davenport & Co., according to my recollection, became brokers after the war. My impression was that Maury & Co. were the only other stock brokers at that time; that Lancaster & Son and Lancaster &

Co. were the parties who gave these quotations, and our quotations were received generally as the best. The dealings of the other concerns were rather subordinate to ours. That is the way they stood—that we were the leading authorities during all those periods, on the prices of bonds and stocks. So far as the reference in this paper to Davenport & Co. is concerned, I did not recollect that Davenport & Co. were really stock-brokers during the war. I overlooked it, if it is so. My reference to the other leading brokers rather embraced the period after the war, than during the war and before that. Please put that down, that my reference to Davenport & Co. and other leading brokers, had reference rather to the whole period, including after the war; some of the brokers, as D. T. Williams & Co., came in after the war. I think Cannon & Schoolcraft also came in after the war; but before and during the war, there were different brokers. But the fact you are interested in, and upon which I pledge my honor, is that we were the accepted authorities on the prices of stock, and my recollection is that we furnished the quotations to that paper; we were the concern that were responsible for them. I do not recollect that these other people ever supplied—or took our place. We considered it a privilege to furnish those things, and furnished them, and I do not recollect that anybody ever interfered with us.

137 XQ. Mr. Williams, how old are you now?

A. On the 13th of July I was eighty-three years old, sir.

138 XQ. On the 13th of last July?

A. Yes, the 13th of last July.

139 XQ. Do you know whether the Richmond Dispatch in 1860, '61, '62 and '63 was owned by a corporation, or was it a private enterprise?

A. My impression is that Cowardin & Ellyson owned it then.

140 XQ. You don't know whether it was a partnership publication, or a corporate one?

A. I never heard of it as anything else but Cowardin & El-

lyson. After the war Ellyson died, and then it became, I think —well, I don't recollect, but during the war, and immediately after the war, it was Cowardin & Ellyson.

141 XQ. Well, do you know who were the owners of the Richmond Dispatch in the year 1860?

A. My impression is that the owners were Cowardin & Ellyosn.

142 XQ. In 1861?

A. I think it lasted all during the war, and after.

143 XQ. The question that Major Anderson propounded to you here a moment ago, to which you read your reply, was also written, was it not?

A. I do not recollect whether he wrote it or not. I did not.

144 XQ. I repeat my question: Major Anderson asked you one question, and you read your answer thereto. His question had been written out before hand, too, had it not?

A. I suppose so. I understood that to be a sort of categorical answer to his question.

145 XQ. Well, his question had been written out before he read it to the stenographer, had it not?

A. I presume so.

146 XQ. Had you read it beforehand?

A. What, his question?

147 XQ. Yes.

A. I do not recollect. I was trying to give my testimony as to the facts in this case. I don't know what you are after.

MR. HOLT: Well, I think that is all.

WITNESS: Well, I think this is too much. I have never before been subjected to a more uncomfortable arraignment; I have told you the best I know how, but you have been trying to lead me wrong, and have treated me as if I had no sense and was either an idiot or an imbecile; that is more than I can stand.

Note by Mr. Holt: Defendant's counsel refers the Master to page 877 of the new record—a part of Mr. Williams' evidence given heretofore.

Re-Direct Examination:

By Mr. Anderson:

1 RDQ. I will ask you first as to the preparation of this paper, by which you made your answer to the first question. Please state whether I saw you in your office this morning.

A. Yes, sir.

2 RDQ. And went over the facts in regard to this matter, with you?

A. Yes, sir.

3 RDQ. And took down from you a statement of those facts?

A. Yes.

4 RDQ. Is that correct?

A. I think so, sir.

5 RDQ. Do you remember if I read that statement, in pencil, to you?

A. I think so, sir.

6 RDQ. And do you remember whether you assented to it as a proper statement of the response you had given me?

A. I think so, sir.

7 RDQ. As I understand, you did not understand that statement, so far as it referred to Davenport & Co., to affirm that Davenport & Co. were in business in Richmond during the war, or made reports during the war?

A. I did not.

8 RDQ. You did not understand it that way?

A. No, I simply understood it as covering the whole case —all the brokers—not the question of succession.

9 RDQ. The statement was read to you before it was copied in your office?

A. Yes, sir.

10 RDQ. Do you know the fact that it was copied in your office, by a typewriter, under the direction of your son?

A. He went out to have it done; I did not follow it out, sir.

Note by Mr. Anderson: I think it is proper I should state here that I saw Mr. Williams this morning, in regard to this matter; made inquiries of him as to the facts stated in that answer, and took down his answer in his own language, as I understood it, and it was read to him, and he approved it. I feel sure that Mr. Williams did not hear distinctly the responses, as I took his language down. He either did not hear my inquiries of him, or he did not hear distinctly, because as has been evidenced from this examination his hearing is defective. His responses I wrote down, in his own language, as I understood him. The only possible error in that answer of Mr. Williams, as taken down by me, was in the reference to Davenport & Co., as to their being in business during the war. I did not know that Mr. Williams had any question about that, at all. The statement was written out by me in pencil, and copied by a clerk in his office.

WITNESS: I thought it was a question simply lumping all the brokers together. I did not understand it as stating that Davenport & Co. were in existence during the war.

11 RDQ. I want to ask you now, if Davenport & Co. were engaged in business during the war, and made reports of sales, would such reports have been accepted by the public as reliable reports? In other words, were Davenport & Co. a reputable concern?

A. Unquestionably, Davenport & Co., if they were in existence, were a reputable concern; but we were so largely the brokers of the place that we a little bit disregarded the balance; that is pust about all.

12 RDQ. Now, Mr. Williams, in rference to the published reports of market quotations made by John A. Lancaster & Son, and by Lancaster & Co., when they reported sales, if they referred to recent or remote sales did they refer to sales within a comparatively short time of the date of the report, or to sales six, eight or twelve months, or two years before?

A. To recent sales.

MR. HOLT: We object to the question.

WITNESS: (Addressing Mr. Holt) I want to say something in reference to what you quote me as having said on my previous examination, that I did not know —what was your question, to which I answered "No?"

MR. HOLT: In response to your request, Mr. Williams, I will read a portion of your re-direct examination before the Master, Mr. Littlefield, found at the bottom of page 876 and the top of 877 of the printed record. The questions and answers are as follows: (Reads)

"Re-Direct Examination by Mr. Anderson:

Q. Mr. Williams, you were employed by the firm of Lancaster & Co. before the war, were you not?

A. Only as a clerk. During the war I was a member.

Q. There are certain quotations here in the Richmond Dispatch, of sales of stocks and bonds Of course, you know nothing about them now?

A. Of course not.

Q. Do you know that the reports were made by your firm for publication in the Richmond Dispatch?

A. Yes, sir.

Q. Do you know anything as to the correctness of those?

A. No doubt if they are in the papers they came from our concern.

Q. Do you know anything as to their correctness?

A. No, sir.

Q. Not now?

A. No."

WITNESS: I just simply say that I had no manner of doubt about their correctness, but as to certifying as to their absolute correctness in there, you, nor anybody else will make me swear to that. From my relation to the head of the concern, and the whole management of the business, I have no doubt of their correctness, but I could not swear to the figures. Now just put that down, please.

By Mr. Anderson:

13 RDQ. Do you have any independent present recollection as to whether those reports were correct, or not?

A. No, indeed.

14 RDQ. Is that what your answer meant, that you had no independent present recollection of whether they were correct, or not?

A. Of course—I could not.

Re-Cross Examination:

By Mr. Holt:

1 RXQ. Have you any personal knowledge upon the subject, whether or not Lancaster & Son published in the Richmond Dispatch the market quotations that are embraced in the record in this case?

A. How on the face of the earth am I to know? I have no doubt that they were regularly and conscientiously published and made up, and that they are to be relied on.

2 RXQ. The question is, do you know whether or not your firm really furnished those quotations to that paper? Have you any personal knowledge upon that subject?

A. Well, from the general course of things, I have no doubt of it. Relying on the general course of business then, I have

no doubt that they were regularly published, and are reliable.

3 RXQ. They may have been regularly published, but are you willing to swear, Mr. Williams, that your firm furnished those to that paper, for publication?

A. From my recollection, I have no manner of doubt that they were. I have no doubt that they were, but as for swearing that they were, that is another question.

4 RXQ. I am asking you the question whether or not you are willing to swear that they did furnish those quotations to those papers.

A. I will swear to this: my connection was such that any honorable gentleman would be willing to say, and I have no manner of doubt, that they are correct.

5 RXQ. That may be, but, Mr. Williams, are you willing, and do you mean to swear now that Lancaster & Son furnished those quotations to the Richmond Dispatch—I do not mean, as a general proposition, but I mean the quotations that are printed in this record? Do you know whether they did, or not, and do you mean to swear whether they did, or not?

A. I have no manner of doubt that they were furnished by them. That is all you are going to get me to say.

6 RXQ. Did you take them over to the newspaper yourself?

A. Do you suppose I am going to answer you that question, that I did?

7 RXQ. You can answer me whether you know, or not?

A. My recollection is that it was the business of an employee of the paper to come for them.

8 RXQ. Well, do you know now whether they actually came and got from your firm the quotations that are set forth in this record here?

A. I have no manner of doubt that they were regularly made out and were regularly taken, and were regularly published. I have no manner of doubt of it.

9 RXQ. Well, now, the only reason that you have no doubt,

Mr. Williams, as I understand you, is because it was your practice to furnish them, and it was their practice to come after them. That is why you have no doubt, is it not?

A. It was the regular course of business to do so.

10 RXQ. It is simply because it was the regular course of business?

A. It was the regular course of business.

11 RXQ. You have no personal recollection on the subject —about these particular questions, have you?

A. Of course I have not.

And further this deponent saith not.

NOTE: The following statement of Major William A. Anderson, of Counsel for the Plaintiff, was made by him on November 21st, 1914, the day following the taking of the deposition of Mr. John L. Williams, but is here inserted in order that it may follow Mr. Williams' testimony:

WILLIAM A. ANDERSON, being first duly sworn, deposes and says as follows:

I think it is due to Mr. John L. Williams, to myself and also to Judge John H. Holt, of counsel for the defendant, that I shall make the following statement:

Upon Mr. Williams' examination on yesterday, in response to the first question, he read his answer from a paper which he held in his hands, and which was a transcript of a pencil memorandum which I had prepared. The facts in regard to that matter are as follows:

I had a conference with Mr. Williams in reference to the facts within his knowledge as to the sales of stock and other securities by John A. Lancaster & Son, and Lancaster & Co., formerly doing business in the city of Richmond. I went over the subject carefully with Mr. Williams, and he very briefly, but clearly, stated the facts within his knowledge. He had

already made a statement in regard to the matter, which had been reduced to the form of an affidavit, which was before us at the time, and which I suppose is now in his possession, but a copy of which can be produced. That affidavit had been sent to me. It is almost identical with this paper, except as to a part of one clause, as I remember. I have not the affidavit before me. Have you a copy of it, Mr. Harrison?

Mr. Harrison: Yes, sir. (Mr. Harrison here produces the copy.)

The Witness: I wrote down, in Mr. Williams' presence, in pencil, the statements which he made to me, and then read them to him. The paper was then handed, either by me or by Mr. Williams' son—by his son, I think—to a clerk in their office, who typewrote the paper. She afterwards handed me the typewritten copy, and the pencil memorandum which I have, and I availed myself of the first opportunity when I could see Mr. Williams to hand to him the typewritten copy. He sat down and read it in my presence, and told me it was correct, and I left it with him, with the understanding that it would be used by him for aiding his recollection as to what the facts were within his knowledge, as already stated by him in his own language. Here is the original affidavit, a copy of which I have. I informed Mr. Williams that it would be necessary to have his deposition, or testimony, that the affidavit could not be used.

Now, I want to call attention to a mistake into which I think Judge Holt was led, probably from hearing Mr. Williams' answer to the first question. I want to say that Mr. Williams never told me during the interview that Davenport & Co. were engaged in business in the city of Richmond, as brokers, during the war, nor does this statement, as I understand it from reading it, so aver. The reference to Davenport & Co. is as follows:

> "I also recall that those firms," (that is, Lancaster & Son, and Lancaster & Co.) "and other reputable firms in the city of Richmond, such as Davenport & Co., caused

the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch," (I am reading it according to the punctuation) "a reputable newspaper published in the city of Richmond before, during and after that war, and that the market reports of such stocks and bonds so published were recognized and accepted by the business community and relied on accordingly."

All the paper states, and all that it was designed to state in that regard, is, that the Richmond Dispatch, a reputable newspaper, was published in the city of Richmond during the period of the war; not to state that Davenport & Co. were engaged in business during the war. I am sure if Judge Holt had read the paper he would have seen that that was the natural and proper construction, and perhaps some of his cross-examination and some of the annoyance resulting from it, to Mr. Williams, would have been avoided.

I want to say for both Judge Holt and Mr. Williams that I was sure, at the time, that there was no purpose on Judge Holt's part to raise any question whatever as to the veracity or integrity of Mr. John L. Williams, for I am sure if Judge Holt knew, as he probably does know, the reputation of that gentleman, he would recognize that no man stands higher in this community. I want to say of Mr. John L. Williams that he is one of the truest, noblest and best men whom it has ever been my privilege to know; and I am sure Judge Holt did not intend to do him any injustice or to cast any imputation upon him, or to make any reflection upon him. Indeed, he assured me that he had no such purpose or intention. I did not tell Mr. Williams to read this paper. I thought he could use it for the purpose of reading it over and making his statement in his own way. The question which I propounded was never mentioned in Mr. Williams' hearing, but was written out in his presence and in the presence of counsel, and in the presence of the Notary—merely a rough draft of the question—upon a tablet lying on the table in the room where the examination was being conducted, and it was merely used by myself as a

guide in dictating the question, which I did, orally, to the stenographer. I frequently do that in important cases, particularly when I wish to submit a very comprehensive question.

I have known the firms of John A. Lancaster & Son and Lancaster & Co., bankers and brokers, of the city of Richmond, for the period of 56 years. I was a clerk in the firm of Lancaster and Son, and, subsequently, during the civil war and afterwards, was a member of the firm of Lancaster & Son.

In particular I know the fact that the firms of Lancaster & Son and Lancaster & Co. furnished accurate market reports of sales of railroad stocks and bonds before, during and after the period of that war.

I also recall that those firms and other reputable firms in the city of Richmond, such as Davenport & Co., caused the quotations of such sales of stocks and bonds to be published in the Richmond Dispatch, a reputable newspaper published in the city of Richmond before, during and after that war, and that the market reports of such stocks and bonds so published were recognized and accepted by the business community and relied on accordingly. And, generally I know that John A. Lancaster & Son and Lancaster &Co. made the sales reported by them therein the course of their business, at the prices stated.

JOHN L. WILLIAMS.
Exhibit No. 1
O. RAYMOND BROWN,
Notary Public.

WILLIAM H. PALMER, being first duly sworn, deposes and says as follows:

Examined by Mr. Harrison:

1 Q. Colonel, will you please state your place of residence, your occupation, and your age?

A. My place of residence is Richmond, Virginia; occupation, President of the National State and City Bank, of Richmond; I am seventy-nine years old.

2 Q. Please state whether or not you were acquainted, by reputation or otherwise, with the firms of John A. Lancaster & Son, and Lancaster & Co., and Davenport & Co., during the period of the Civil War—prior thereto, and during that period.

A. I knew of the firms in the brokerage business very well —Lancaster & Son, before the war and after the war. I do not remember when Davenport & Co. commenced; but Lancaster & Co. I knew before the war. I dealt with them.

3 Q. Did you or not deal with Lancaster & Co. both before and during the war?

A. Both before and after the war.

4 Q. I don't know whether your answer covered that, or not. Were those firms, according to your recollection, engaged in business during the war?

A. They were.

5 Q. How were they regarded, Colonel, in the business world?

A. They were regarded as first class brokers.

6 Q. Were you, or not, familiar with the Dispath, a newspaper published in the city of Richmond?

A. Yes; I received it nearly every morning.

7 Q. Did your acquaintance with the Dispatch relate to the period both prior to and during the war?

A. Yes.

8 Q. What was the character and standing of that newspaper?

A. Very high.

9 Q. As a matter of fact, you may say, Colonel, if you know, how long after the war it continued its publication, and by what paper it was succeeded.

A. It was bought out by Joseph Bryan, and it is now incorporated as the "Times Dispatch"—I do not remember the exact date, but it was some years after the war.

10 Q. The Times Dispatch then is the successor of the Dispatch?

A. Yes.

11 Q. State whether or not you remember seeing market quotations published in the Dispatch, either prior to the war or during the Civil War—market quotations of stocks and bonds.

A. Yes.

12 Q. In the name of what firm or firms were those publications made?

A. I saw the market quotations both before and during the war. I take it that they were from those firms, but I could not swear that they were from those firms. I read the market quotations very regularly during the war, before and after the war, in the Dispatch.

13 Q. Then the market quotations of stocks and bonds did appear in the Richmond Dispatch, both before and during the period of the war?

A. Yes.

14 Q. And you frequently read them and consulted them?

A. I read them and consulted them, yes.

15 Q. How were they regarded, Colonel, with respect to their reliability?

A. Absolutely as the transactions of the day, and as correct.

Cross-Examination:

By Mr. Holt:

1 XQ. Colonel, you were not a member, as I understand it, either before or during the war, or at any time, of the firm of Lancaster & Son?

A. No, sir.

2 XQ. Nor of either or any of the brokerage firms about which Mr. Harrison has asked you?

A. No, sir, I was not a member of any of them.

3 XQ. You have no personal knowledge of any market quo-

tations in the Richmond Dispatch, but just such information as the paper purported to give; is that true?

A. I have before the war and since the war, knowledge; during the war I was engaged in the army.

4 XQ. I mean the quotations that appeared in the Dispatch during the years 1860, '61, '62 and '63—you have no personal knowledge about those reports, have you?

A. Except that I saw them in the paper.

5 XQ. I mean the whole information you have is what appeared in the paper itself?

A. Not absolutely, because I had a good many securities in my hands during the war.

6 XQ. You never made any market reports, yourself, to the Richmond Dispatch, did you?

A. No.

7 XQ. You never helped Lancaster & Co. or any other firm, make up any market reports, did you?

A. No, sir, I never did.

8 XQ. And the only information you have concerning the reports that appeared in that paper, was what the paper itself showed?

A. That is true.

9 XQ. You really don't know, from your own personal knowledge, whether Lancaster & Son, or Lancaster & Co., or any of the brokerage firms referred to, furnished those reports, or not, do you?

A. I do not. I was in the army during the war.

10 XQ. You were in the army?

A. For four years.

11 XQ. What time did you enlist?

A. April 21st, 1861.

12 XQ. When did you come out?

A. At Appomatox Court House.

13 XQ. You took the whole thing in, then?

A. Yes.

Re-Direct Examination:

By Mr. Harrison:

1 RDQ. You spoke, Colonel, of having a good many securities to handle during the war, and in that way had some independent knowledge of the market?

A. Yes.

2 RDQ. Did you deal wih Lancaster & Co.?

A. I dealt with Lancaster & Co. before the war and after the war. I simply knew of the securities that were in my hands, belonging to an estate, and so on; but I naturally looked at the quotations published during the war, from having these securities. I examined the quotations for that reason, that I was interested in them.

3 RDQ. Then you did examine the quotations that appeared in the Richmond Dispatch during the war, because you were interested in seeing what the market quotations were?

A. Yes, sir.

4 RDQ. As a matter of fact, did your father have any connection with Lancaster & Co., in business; was he instrumental in starting them in business, or anything of that sort?

A. My grandfather started Lancaster in business.

5 RDQ. Your grandfather started Lancaster in business?

A. Yes.

6 RDQ. John A. Lancaster was in business then for many years before the war?

A. Yes. My grandfather started the old man in business, and his son, both, and I knew them, of course.

And further this deponent saith not.

(Signature waived.)

NOTE: The further taking of these depositions was here adjourned, and continued to November 21st, 1914, at 12:00 o'clock, M., at the office of Mr. John P. Branch, in the Merchants National Bank, Richmond, Va.

O. RAYMOND BROWN,
Notary Public.

OFFICE OF JOHN P. BRANCH,
Merchants National Bank Building,
Richmond, Va., November 21, 1914.
12:00 o'clock, M.

The further taking of these depositions was resumed this day, pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Hon. Holmes Conrad,
Of Counsel for the Plaintiff.

Hon. A. A. Lilly, Atty.-Genl.,
Hon. John H. Holt,
Of counsel for the Defendant.

JOHN P. BRANCH, being first duly sworn, deposes and says as follows:

Examined by Mr. Anderson:

1Q. Please state your age, residence and occupation.

A. Eighty-four years of age; President of the Merchants National Bank of Richmond, Virginia; residence, Richmond, Virginia.

2 Q. Where were you residing during the war between the States—1861 to '65, inclusive?

A. My home was in Petersburg, Virginia, when I went in the army.

3 Q. Were you a member of any firm engaged in business during that period? If so, where was that firm engaged in business, and what was its business?

A. I am trying to think—I think I was a member of two firms; let me see. I don't know the name of the firm, but I was a partner in a firm consisting of my father and my brothers and brothers-in-law.

4 Q. And yourself?

A. Yes, and myself. We had several firms, and I do not know what they were called; I do not remember now.

5 Q. Where were they engaged in business?

A. In Petersburg, Virginia.

6 Q. And what was their business, Colonel Branch?

A. Well, we were mostly in the banking business.

7 Q. Were you acquainted with the Richmond Dispatch newspaper, as a newspaper, at that time?

A. Yes—it was published in Richmond.

8 Q. What was the standing, reputation and character of that journal, at that time ?

A. Very good.

9 Q. What was its standing as a journal giving information upon financial matters—as to the information furnished by its financial columns?

A. Well, sir, it was very reliable.

10 Q. Do you remember, Colonel Branch, anything as to the market quotations of the values of stocks and other securities, appearing in that paper during that period, particularly from 1861 to '63?

A. I do not.

11 Q. You have no independent recollection of them?

A. No.

12 Q. Do you know that there were such publications in the paper?

A. Yes. They were published in the newspaper referred to by you.

13 Q. Can you state how they were esteemed and regarded by the business public, in this community and in Virginia?

A. Well, I will say, in Richmond and Petersburg, and the vicinity, very good.

14 Q. Can you say whether they were accepted by the public as reliable quotations of the values of those stocks and securities?

A. They were accepted by the public—they were relied on by the public, as being true, so far as I know and believe.

15 Q. Were you acquainted with the firm of John A. Lancaster & Son, and its successor, the firm of Lancaster & Co.?

A. I was, yes, and had business transactions with them.

16 Q. Do you know the standing and reputation of those firms, as brokers and bankers? If so, please state what the same was.

A. They were considered very reliable people—reliable and honest.

17 Q. How were any stock quotations furnished by Lancaster & Son, or Lancaster & Co., and published in the Richmond Dispatch or other newspapers, regarded by the public?

MR. LILLY: We object to that question.

A. I do not know, as a matter of fact, that they published any of these quotations, but the newspapers did publish them and state that they were the quotations of these banking firms. What I mean by that is, I did not see the type put up, or anything of that sort, but they were believed to be their quotations.

By Mr. Conrad:

18 Q. The market quotations furnished by Lancaster & Co. to the Richmond Dispatch, of market prices, how would they be accepted by bankers and the public generally?

Mr. Lilly: We make the same objection to that question.

A. They were accepted by me and by other people who dealt in securities; as far as I know and believe, they were accepted by all of them.

Cross-Examination:

By Mr. Lilly:

1 XQ. As a matter of fact you do not know that Lancaster & Co., or Lancaster & Son ever furnished any market quotations to the papers for the purpose of publication, do you?

A. No further than what I read in the newspapers; they have told me that they were publishing them, but I have no recollection of it at all. It is my belief that they were their quotations, because what I saw in the papers was considered very reliable. I never saw them set up the type, and never was in the printing office.

2 XQ. And you don't know who furnished them, only from what you saw in the paper?

A. I may have known at the time, but I do not recollect it now. No, I do not recollect any information on that subject. I believe what I saw in the papers were their quotations, and that they were correct.

3 XQ. But you base that only upon what you saw in the paper?

A. Well, I would not say that, because I knew what the quotations ought to have been, in the paper, and I have no recollection that they were not exactly what was correct, as they appeared in the newspaper. It would be impossible for me to remember in detail what any particular security sold for.

Re-Direct Examination:

By Mr. Anderson:

1 RDQ. State if you can with reference to what currency, as a standard of value, were these quotations made during the war period.

MR. LILLY: We object to that question, as being foreign to the purpose for which these depositions are being taken, and outside of the reference permitted by the Master in New York.

A. During a part of the war the currency traded in was bank notes. Later on during the war, the only currency that was a medium of exchange, I would say, was Confederate money.

And further this deponent saith not.

(Signature waived.)

NOTE: An adjournment was here taken to the office of Davenport & Co., 1113 East Main Street, Richmond, Virginia, where the following depositions were taken:

COLEMAN WORTHAM, being first duly sworn, deposes and says as follows:

Examined by Mr. Harrison:

1 Q. Mr. Wortham, please state your age, residence and occupation.

A. I am forty-two years of age—I was born the 18th of June, 1872. I have lived in Richmond all my life, and I am engaged in the stock brokerage business and fire insurance business.

2 Q. Under what firm name?

A. Davenport & Co.

3 Q. Is Davenport & Co. an incorporated concern, or a partnership firm?

A. Partnership.

4 Q. How long have you been connected with Davenport & Co.?

A. As I came with them in February, 1899, as a clerk, and on the 1st of January, 1900, I became a member of the firm.

5 Q. Your associates at the time you became a member of the firm were who?

A. Mr. Virginius Newton.

6 Q. And who are your present associates?

A. Mr. George W. Warren and Mr. J. J. Ballou, Jr.

7 Q Mr Wortham, I hand you a book which I ask you please to examine, and state what it is. What is the record of, and what has been its custody up to this time?

A. It is a book of the old firm of Davenport & Co.; it appears to have been used during 1863, and along during the war times. It was found, along with some other books that I did not know were in existence until Mr. Le Gendre came here some little time back and found it in the vault there (witness indicates vault in office). The entries of auction sales had by Davenport & Co. appear to be entered on this blotter during the year 1863, and subsequent to that date there are some entries here, too. In addition to that, in the back of this book there seems to be the Journal—Davenport & Co.'s Journal for 1863. These entries in the Journal were taken from the Cash Book, at that time, of Davenport & Co.

8 Q. Is the Cash Book before you?

A. One of these books here is the Cash Book. (Witness here produces another book.) This is the Cash account of Davenport & Co., for 1863; and from the Cash Book the items

were journalized, and from the Journal they were posted to the Ledger of Davenport & Co.

9 Q. Is the Ledger before you?

A. (Witness here produces a third book.) Here is the Ledger of Davenport & Co. Here is a record of the stock sales.

10 Q. You have then before you three of the original books of entry of the old firm of Davenport & Co., showing stock sales during the year 1863, and subsequent to that time—the Cash Book and the Ledger, into which those sales were carried—

A. Together with what would be called a "Scratcher" or "Blotter"; the Blotter and Journal are in the same book.

11 Q. Have you, Mr. Wortham, any knowledge, either personal or by reputation, of how far back the firm of Davenport & Co. were engaged in business in the city of Richmond?

A. I didn't know until I found this book that the firm was started until 1865, but sometime since I was in New York and there I saw the minutes——

MR. LILLY: We object to that character of evidence.

12 Q. So far as you knew, yourself, you were under the impression that Davenport & Co. began business in 1865?

A. Yes.

13 Q. The old vault that you spoke of is here in the room that we are occupying, is it not? I mean in the building of Davenport & Co.?

A. In this building, yes, sir. The building does not belong to Davenport & Co.

14 Q. I mean in the building occupied by your firm, Davenport & Co.?

A. Yes.

15 Q. You say there have been a large number of old books stored in that vault?

A. It has been the custom, ever since I have been here,

whenever we got through with anything to throw it up into that old vault.

16 Q. And you were not aware that these books of original entry of Davenport & Co., that are now introduced, covering the period of 1863, were in existence, until recently when they were found by an examination into that old vault?

A. I was not.

17 Q. I will ask you, Mr. Wortham, if the handwriting of the entries in the three books that you have referred to, of Davenport & Co., appears to be the same, or not?

A. They all appear to be in the same handwriting. If you will allow me—you can trace the entries from the Blotter to the other books.

18 Q. I was going to ask you to trace one. I will ask you to trace from the Blotter the entries through the Journal and the Ledger.

A. Here is what appears to be the March, 1863, sales.

19 Q. On what page?

A. On page 34 of the Blotter. These sales appear to have been transferred from the Blotter—

20 Q. The aggregate amount, you mean?

A. The aggregate amount; here appears to be the gross amount of sales for March, $79,153.38—for March, 1863—on page 34 of the Blotter—carried forward to the Cash Book, page 102, $78,323.38. There is a difference there, you will see, of $830.00 $650.00 there on the same date, added to this amount makes a discrepancy of $180.00, that is, between those two cash entries and this amount here; that is accounted for by an item of Bolling Haxall, of $180.00, which does not appear to be paid for. In other words, the total of this, less $180.00, is the amount of the two cash book entries. Then from the Cash Book, these two amounts were transferred to the Journal, and from the Journal they were posted to the Stock Sales; the total amount is $153,338.87. That completes the entry. They are transferred from the Blotter to the Cash

Book, from the Cash Book to the Journal, and from the Journal to the Ledger.

21 Q. What date is that?

A. This appears to be April 1st, 1863, and these were evidently for transactions in March, 1863, and put into the Cash Book the 1st of April.

22 Q. Then, beginning with page 34 of the Blotter you will find the aggregate amount of sales—gross sales—for the month of March, $79,153.38?

A. Yes, sir.

23 Q. You find on that page that Bolling Haxall was charged with $180.00?

A. Yes.

24 Q. Now the next transfer is to what book?

A. From the Blotter to the Cash Book.

25 Q. Then you find the aggregate of those sales, less the $180.00?

A. Made up by these two items.

26 Q. Transferred to the Cash Book—is that right?

A. Yes, sir.

27 Q. And the total appearing on the Cash Book is transferred to the Journal?

A. The Journal.

28 Q. At what page?

A. Page 300.

29 Q. The total of $153,338.87 appearing on the Cash Book, on page 102, and transferred to the Journal on page 300, does that complete it?

A. It is transferred from the Journal to the Ledger, page 54.

30 Q. That amount, $153,338.87, is posted on the Ledger, page 54, is that correct?

A. Yes, sir.

31 Q. And that completes the transaction?

A. That completes the March sales.

MR. LILLY: Why do you call them the March sales?

WITNESSS Because the caption in the Journal is "Gross Sales, March 28th."

32 Q. The caption in the Blotter, page 34, is "Richmond, Va., 1863, Debtors. Gross Sales, March 28th"?

A. You see that is simply a resume of two or three pages of the Blotter before that.

33 Q. Do I understand that the method you have described, of the original entries in these books, was the system used as shown by these books, of making the entries on the Blotter, and transferring them to the various other books of entry, as you have just shown?

A. Yes, sir.

36 Q. I may have been inaccurate in describing the Cash Book, Journal, and Ledger, as books of original entry. Please state whether they are books of original entry, or whether the "Blotter" or "Scratcher," in which the original sales are entered and recorded, is the only book of original entry?

A. The Blotter is the record of the sale—that is the original entry—and from the Blotter the items are carried to the Cash Book, and from the Cash Book they are journalized; that was an old system they had; and from the Journal they were posted to the Ledger. So the entry was originally made in the Blotter and went on through to the Ledger.

37 Q. I find published in the Richmond Dispatch of Tuesday, April 7th, 1863, under the caption "Financial and Commercial," a list of bonds and stocks sales at Messrs. Davenport & Co.'s auction sale "today"; and among the stocks and bonds sold are Virginia Sixes, registered, at 112 and 114. Do you find a corresponding entry on the Blotter?

A. On page 38, this is April 7th, 1863, there is a record of

$1,400 and $500 of Virginia 6's, sold at 114 and 112, respectively.

MR. HOLT: Those are bonds, are they?
WITNESS: I imagine so, from the record here.
MR. HARRISON: They are described as Virginia Sixes.
MR. HOLT: But I mean, they are bonds?
MR. HARRISON: Oh, yes.

By Mr. Harrison:

38 Q. Does the Blotter show for whose account they were sold?

A. For account of C. W. Purcell & Co., and sold to W. M. Sutton & Co.

39 Q. I find under the market quotations of the date mentioned above, Farmers Bank stock appears to have been sold at 131. Do you find a corresponding entry on the Blotter?

A. Yes. Farmers Bank, 40 shares at 131. That is on page 36. Sold by Samuel J. (or I.) Harrison, to W. M. Sutton & Co.

40 Q. I also find in the same market quotation, for April 7th, 1863, described above, Bank of the Commonwealth stock sold at 121. Do you find a corresponding entry in the Blotter of Davenport & Co.?

A. Yes, sir. Bank of Commonwealth, 16 shares sold at 121; sold for account of Isaac Davenport, Jr., and bought by B. H. Nash.

41 Q. I also find in the same market quotations published, of sales made April 7th, 1863, James River & Kanawha Company's stock sold at 19. Do you find any corresponding entry on the Blotter?

A. Yes, sir. James River & Kanawha Company, 100 shares at 19.

42 Q. For whose account?

A. Sold for account of H. Hancock, and bought for account of George S. Palmer.

NOTE (By Mr. Conrad): It is hereby agreed by the parties, by their counsel, that the photographs, numbered consecutively 1, 2, 3, 4 and 5, herewith produced, are accurate copies of the Richmond Dispatch of the dates mentioned thereon.

NOTE (By Mr. Holt): But the defendant, the State of West Virginia, objects to them on the ground of their immateriality and irrelevance in this case.

43 Q. I find in the Richmond Dispatch under date of July 20th, 1863, under the caption "Financial and Commercial," the following: "Bonds and Stocks—At Messrs. Davenport & Co.'s auction sale last week." In this statement of sales dated July 20th, 1863, as having been made "last week," I find Virginia registered bonds at 160. Do you find any corresponding entry on the Blotter? The sales were made on a date prior to July 20th, 1863—Virginia registered, at 160?

A. Here is a record of Virginia sixes, at 160, on page 64, July 16th, 1863.

44 Q. I also find here Virginia Central Railroad stock, at 116.

A. Here is an entry of 18 shares at 116, on page 62 of the Blotter, July 16th, 1863.

45 Q. I find in the advertisement last referred to, Bank of the Commonwealth stock sold at $135. Do you find any corresponding entry on the Blotter? These sales are published in the Dispatch of July 20, 1863, as having been made "last week"; they would be of a date, therefore, prior to July 20, 1863?

A. I do not find that sale recorded.

Cross-Examination.

By Mr. Holt:

1 XQ. Mr. Wortham, how old are you?

A. Forty-two.

2 XQ. When did Davenport & Co. go into business in the city of Richmond, so far as you know?

A. I could not answer that question—I do not know.

3 XQ. When did you first know them?

A. I knew them when I was a youngster in tow, Judge Holt; my cousin was a member of the firm of Davenport & Co.

4 XQ. Do you recollect when that was?

A. Certainly as far back as 1891 or '92.

5 XQ. You didn't know them then in the '60's?

A. No, sir, not very well; I didn't know anything then.

6 XQ. Now you have produced three books here. Please name them.

A. We call this book the Blotter—the book of original entry.

7 XQ. And the next two?

A. This is the Cash Book, and this is the Ledger. The back part of the Blotter was used for the Journal.

8 XQ. Then the three books you have produced may be described as "Blotter," "Ledger" and "Cash Book."

A. I would describe them as the "Blotter and Journal" (because the Journal is kept in the back of the Blotter), "Cash Book" and "Ledger."

9 XQ. When did you first see these books?

A. About two weeks ago, when they were found in this vault.

10 XQ. And you never saw them before?

A. No, sir.

MR. CONRAD: Do you see anything on those books, anywhere, to indicate what business house they belong to?

WITNESS: Yes, sir; we see the auction sales; the first entry in the book, on the auctions—here is an auction sale held on March 28th. This auction sale was car-

ried through the proper channels into the Journal, which is in the same book as the Blotter, and the Journal is marked "Journal, Davenport & Co., Richmond, Va."

MR. HARRISON: Both are under the same cover?

WITNESS: Yes.

11 XQ. Then your answer to Major Conrad's question is that they carry the name of Davenport & Co.?

A. Yes, sir.

12 XQ. Do you know who made the entries in those books?

A. I do not.

13 XQ. Are you familiar with the handwriting in those books?

A. I never saw it until the books were discovered a short time since, that I know of.

14 XQ. Then you can not say whether the books are genuine, or not; all that you know about them, as I understand it, is that you found them in the vault in the building you now occupy?

A. I found them in the vault of Davenport & Co., with their papers and old books in there.

15 XQ. In the building you now occupy?

A. Yes.

16 XQ. You are not familiar with any writing in those books?

A. No, sir.

17 XQ. And you could not swear to their genuineness or correctness, either, could you, from personal knowledge?

A. Not from personal knowledge.

18 XQ. All then you know about them is what you infer from the place you found them?

A. And from what I see in the books.

19 XQ. Do you find anything in either of those books bearing the date of January 1st, 1861?

A. I have not found it, Judge—I have only looked at these that are here. (Witness here turns the leaves of one of the books.) Here are some entries made back in September, 1858; I will see whether they go further than that. Here are some entries in 1861. Here is (reads) "May, 1861, Paid Dispatch for advertising."

MR. HARRISON: How much?

WITNESS: $45.00.

20 XQ. Do you find any entry in either of those three books —any market quotations—as early as January, 1861?

A. I have not found them.

MR. CONRAD: Have you looked?

WITNESS: No, sir.

21 XQ. Will you look and see if you find any entries relating to market quotations as early as January, 1861?

A. From these books, the stock sales appear to have begun in March, 1863—March 28th.

NOTE (By Mr. Holt): The defendant, State of West Virginia, through counsel, objects to the whole of the testimony of this witness relative to the three alleged books of Davenport & Co., discovered by him, upon the ground that the same are irrelevant; and it further objects to the photographs heretofore introduced, upon the ground that they do not relate to any market quotations that were embraced in the plaintiff's revised exhibit No. 2, heretofore filed in the record.

NOTE: The three books referred to in the testimony of this witness are marked respectively, "Exhibit C. W.—A," "Exhibit C. W.—B," and "Exhibit C. W.—C."

And further this deponent saith not.

(Signature waived.)

... session was postponed ...
Monday of the next session of Congress.

A motion to reconsider the vote postponing the 1[illegible] was agreed to by the following vote—ayes 31 noes 30.

FINANCIAL AND COMMERCIAL

TUESDAY, April 7, 1863.

SPECIE AND BANK NOTES.—We continue to quote gold at $1 premium, selling rate, with more firmness in the market reported. Silver may be quoted at $3 75 premium. Bank notes have advanced. The brokers to-day were asking 75 per cent.

BONDS AND STOCKS.—At Messrs. Davenport & Co's auction sale to-day, which was largely attended, Confederate bonds, (15 M. loan,) coupons, brought 157; do. registered, 110@118; do. do., (100 M. loan,) registered, 1872, 106; do. do., 8 per cent convertibles, 106@107; Confederate Treasury notes, interest bearing, par and interest; Virginia sixes, registered, 112@114; Georgia sevens 49@150; Manassas Gap L. R. bonds, sixes, 58; Orange and Alexandria R. R. bonds, 2d mortgage sixes, 102; Traders' Bank stock, 121; Bank of Commonwealth, 121; Farmers' Bank, 131, (a large advance;) Bank of Richmond, 100@101; Bank of Monticello, 100; James River & Kanawha Co, 19; Richmond and Liverpool Packet Co 620; Old Dominion Ins. Co., 3 ½; Va. Fire and Marine Ins. Co., 47. All the bonds were sold with interest added to the day of sale.

PRODUCE, GROCERIES, &c.—Apples, $3[illegible]@50 ℔ barrel; very few in market. Butter in demand at $3@3 25 ℔ lb. Bacon—hoground, $1 25@1 40.—Beeswax, $1 50 ℔ lb. Beans, $15@18 ℔ bushel. Corn, $10 ℔ bushel; very scarce, and in demand Corn Meal, $10@12 ℔ bushel. Candles, $3@3 25 ℔ lb. Dried Apples, $13@14 ℔ bushel. Dried Peaches, $15@18 ℔ bushel. Flour—Superfine, $31@32; Extra, $34; Family, $36 ℔ bbl. Hay, $8@3 50 ℔ cwt. Lard, $1 50@1 60 ℔ lb. Potatoes—Irish, $8@10, Sweet, $10@11 ℔ bushel.—Peas, $10@18 ℔ bushel. Oats, $6 50 ℔ bushel.—Seeds—Timothy, $7—season over; Clover, $24@25 Tobacco—no sales of leaf for two days past, and we make no change in quotations; the breaks are somewhat larger. The market for manufactured is less animated. Wheat—nothing doing, and we repeat the nominal quotations of $1@1 50 ℔ bushel. Sales have been made for horse-feed at $6@5 50. Dressed Fowls are very high, huckstors in the market demanding $3@12 ℔ pair for indifferent chickens; Turkeys are held by commission merchants at $1 25 ℔ lb. Eggs, $1 50 ℔ dozen.—Sugar, Brown, $1 20@1 30 ℔ lb. as to quality.—Molasses, $10@12 ℔ gallon. Coffee, 4@5 ℔ lb. Salt, 50c. ℔ lb. Rice, 30@35c.

John Van Buren said at the St. Patrick's dinner in New York that Lincoln should not stop to consider the color of the ...

from the rigo ...

The entire ... Central Kentuc... been recaptured ... greatly exagge... plunder taken b...

I have this m... from Gen. Gill... gal's Ferry, on ...

"I underrated ... of yesterday's f... six hundred me... to one. During ... Cumberland in ... twsen three an... less will not fal...

The alacrity ... trated, and the ... are highly com...

THE CAPTURE ...

A dispatch f... says:

On Monday ... cavalry dashed ... mouth of the ... Court House, ... and burned sav... ment corn.

Volunteer aid ... the rebels were ... killed and thirte... role and taken t...

Telegraphic o... Kanawha from ...

The Governm... into at Hale's ... on the Kanawha ... was completely ...

The Victor N... ceeded in reach... C Levi are still ... that they are re...

CINCINNATI ... Pleasant Va., ... alry. They ran... and burned 7,00... Government, a... conflict which i...

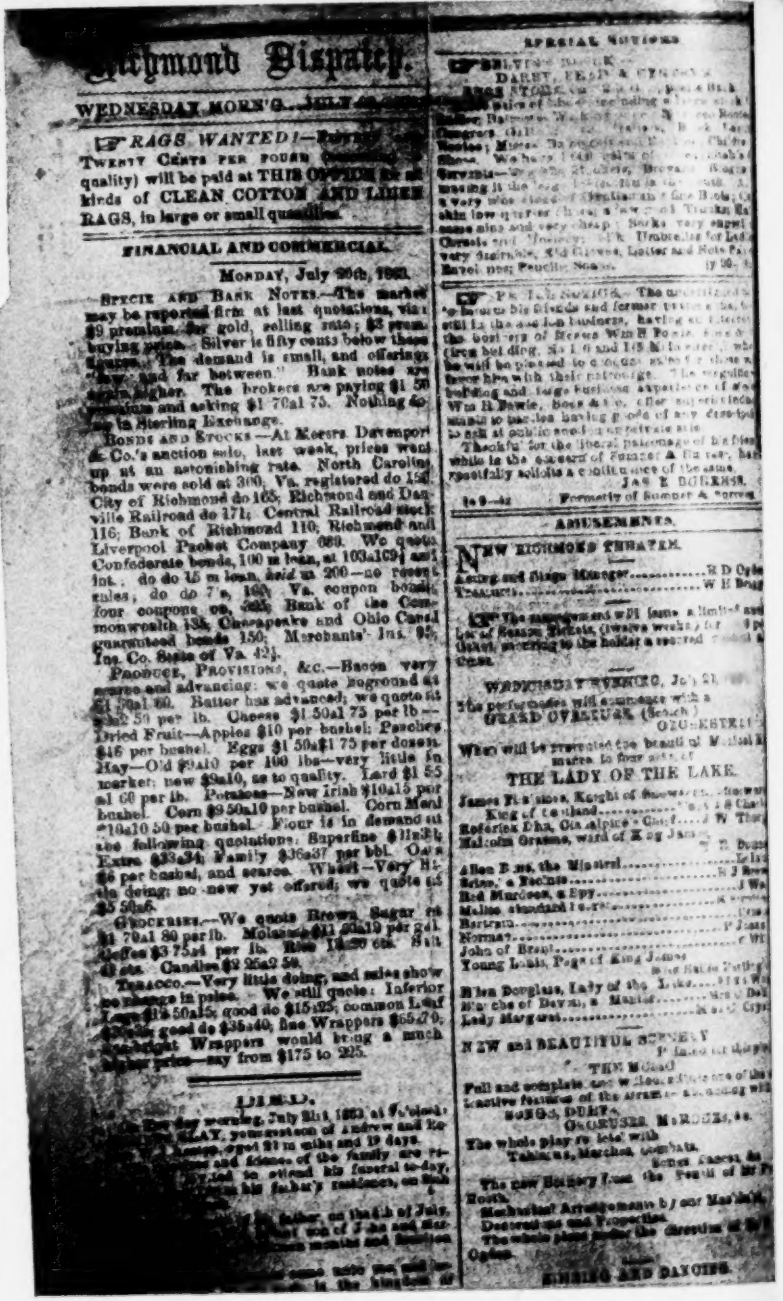
FERNANDO WO...

Fernando Wo... reply to Senator ... position to the ... that it oppresse... to say that he ... much as it an... cludes:

Sir, let me ex... mitted to judici... exigency may r... standing its odi... valid under the ... obey it. Indee... it as authority.

Photograph No. 1

O. Raymond Brown, Notary Public



Richmond Dispatch.

WEDNESDAY MORN'G ... JULY ...

☞ *RAGS WANTED!*—... TWENTY CENTS PER POUND ... quality) will be paid at THIS OFFICE for all kinds of CLEAN COTTON AND LINEN RAGS, in large or small quantities.

FINANCIAL AND COMMERCIAL.

MONDAY, July 28th, 1862.

SPECIE AND BANK NOTES.—The market may be reported firm at last quotations, viz: $9 premium for gold, selling rate; $8 premium buying price. Silver is fifty cents below these figures. The demand is small, and offerings few and far between. Bank notes are ... higher. The brokers are paying $1 50 premium and asking $1 70@1 75. Nothing doing in Sterling Exchange.

BONDS AND STOCKS.—At Messrs. Davenport & Co.'s auction sale, last week, prices went up at an astonishing rate. North Carolina bonds were sold at 300; Va. registered do 150; City of Richmond do 105; Richmond and Danville Railroad do 171; Central Railroad stock 116; Bank of Richmond 110; Richmond and Liverpool Packet Company 060. We quote Confederate bonds, 100 m loan, at 103@104 and int.; do do 15 m loan, held at 200—no recent sales; do do 7's, 100; Va. coupon bonds, four coupons on, 92½; Bank of the Commonwealth 138; Chesapeake and Ohio Canal guaranteed bonds 150; Merchants' Ins. 95; Ins. Co. State of Va. 42½.

PRODUCE, PROVISIONS, &c.—Bacon very scarce and advancing; we quote hoground at $1 70@1 80. Butter has advanced; we quote at ... per lb. Cheese $1 50@1 75 per lb.—Dried Fruit—Apples $10 per bushel; Peaches $15 per bushel. Eggs $1 50@1 75 per dozen. Hay—Old $9@10 per 100 lbs—very little in market; new $8@10, as to quality. Lard $1 55@1 60 per lb. Potatoes—New Irish $10@15 per bushel. Corn $9 50@10 per bushel. Corn Meal $10@10 50 per bushel. Flour is in demand at the following quotations: Superfine $[illegible] Extra $33@34; Family $36@37 per bbl. Oats $6 per bushel, and scarce. Wheat—Very little doing; no new yet offered; we quote at $5 50@6.

GROCERIES.—We quote Brown Sugar at $1 70@1 80 per lb. Molasses $11 @[illegible] per gal. Coffee $3 75@4 per lb. Rice 14@20 cts. Salt 40 cts. Candles $2 25@2 50.

TOBACCO.—Very little doing, and sales show no change in prices. We still quote: Inferior Lugs $[illegible]@5; good do $[illegible]@25; common Leaf $[illegible]@40; good do $35@40; fine Wrappers $65@70. Smoking bright Wrappers would bring a much higher price—say from $175 to 225.

DIED,

... Sunday morning, July 21st, 1862, at [illegible] ... GRAY, youngest son of Andrew and Rebecca ... aged 21 m nths and 19 days.

... and friends of the family are respectfully ... to attend his funeral to-day, ... his father's residence, on Sixth ...

... father, on the 4th of July, ... son of John and Mar... months and fourteen ...

... came unto me, and ... is the kingdom of ...

SPECIAL NOTICES.

☞ SILVER WATCH ...

DARBY, READ & CRAIG ...

RAGS STORED ...

... Hats; Balmoral ... Hosiery; Gauntlets ... Gaiters; Misses' ... Shoes. We have ... Corsets ... Gauntlets—... Braces. Boys' ... wearing it the ... a very nice ... skin low quarter ... same size and very cheap. Socks very cheap. Corsets and Hosiery. Silk Umbrellas for Ladies very desirable. Kid Gloves, Letter and Note Paper, Pencils, Soaps, &c. jy 26—

☞ P. H. LANGHORNE.—The undersigned ... to inform his friends and former ... he is still in the auction business, having ... the business of Messrs. Wm. H. Pomfret ... (late bel ding, No. 1 6 and 148 Main street), ... he will be pleased to continue ... those who with their patronage. The republic ... building and large business ... Wm. H. Bowie, boat ... offer superior facilities ... wishing to auction having ... to sell at public sale ... or private sale.

Thankful for the liberal ... while in the concern of Pomfret & Langhorne, ... respectfully solicits a continuance of the same.

jy 9—4t JAS. E. DOLEHIDE, Formerly of Pomfret & Langhorne.

AMUSEMENTS.

NEW RICHMOND THEATRE.

Acting and Stage Manager ..... H. D. Clyde
Treasurer ..... W. H. Bragg

☞ The management will issue a limited number of Season Tickets, (twelve weeks,) for ... (leave), entitling to the holder a reserved ... seat.

WEDNESDAY EVENING, July 23, ...

The performances will commence with a
GRAND OVERTURE (School) ...
ODDMENTS!
When will be presented the beautiful Musical ... in four acts, of
THE LADY OF THE LAKE.

James Fitz-James, Knight of Snowdoun ... Snowdoun
King of England ... W. Thorpe
Roderick Dhu, Chieftain of Clan Alpine ... Chief ... W. Thorpe
Malcolm Graeme, ward of King James ... T. Burke

Allen Bane, the Minstrel ... N. J. Bowers
Brian, a Pechtic ... J. Wells
Red Murdoch, a Spy ... A. ...
Malise, standard bearer ... [illegible]
Bertram ... P. Jones
Norman ... C. Wilson
John of Brent ... [illegible]
Young Lochin, Page of King James ... Miss Hattie Forbes

Ellen Douglas, Lady of the Lake ... Miss Wells
Blanche of Devan, a Maiden ... Miss Dale
Lady Margaret ... Miss C. Cryer

NEW and BEAUTIFUL SCENERY ... James Thorpe, Manager.

THE Musical ...
Full and complete, and will ... one of the attractive features of the ... evening with ...
SONGS, DUETS, ...
CHORUSES, MADRIGALS, &c.
The whole play to be ... with
Tableaux, Marches, Combats, ...
Scenes drawn ... Hosts.
Manhattan! Arrangements by our Manager.
Destruction and Properties.
The whole piece under the direction of Mr. ... Ogden.

SINGING AND DANCING.

Photograph No. 2

O. Raymond Brown, Notary Public

hold their position or our artillery, assassinated Capt. Freeman, who had been sent a prisoner to the rear. We thereafter took no more prisoners.

We took three of the guns back and killed large numbers of the enemy, but heavy reinforcements arriving out of Nashville, we found it expedient to retire.

FINANCIAL AND COMMERCIAL.

FRIDAY, April 17, 1863.

SPECIE AND NOTES.—Gold was heavy to day, and some of the brokers were only asking $4 75 premium. The buying rates may be quoted at $4@4 25 premium. Bank notes are selling at 75@80 ⅌ cent premium—the inside rate for Virginia's. For Confederate Treasury notes, old issue, the brokers are now offering 2½ ⅌ cent premium.

BONDS AND STOCKS.—at Messrs. Lancaster & Co.'s sale, this week, Confederate bonds (5,000,000) coupon, brought 158½@163½ and interest; do. do. (100,000 000) short dates, registered, 104 and int.; long dates, 109@110½ and int.; Virginia sixes, registered, 112@113 and int.; do. do., coupon (4 coupons on) 160; North Carolina eights 130 and int.; Tennessee sixes (2 coupons on) 136, Richmond city bonds, due 69 and '70, 133 and int.; do. do., due '80, 132@139; Old Dominion Insurance stock 39½@40; Insurance Company of the State of Virginia 39½@40½; Insurance Company of the Valley of Virginia 61; Importing and Exporting Company 73½@75½; Bank of Virginia 8½; Bank of the Commonwealth 12½; Farmers' Bank 128, Midlothian Coal Mining Company 110; James River and Kanawha Canal Company 20½; Manchester Cotton and Woolen Manufacturing Company 215; Richmond, Fredericksburg and Potomac Railroad stock 110@111; Virginia Central Railroad stock 100½@101½; Orange and Alexandria Railroad stock (common) 27½; Confederate Treasury notes, interest bearing, 98½@99½ and int.

PRODUCE, &c.—Apples, $32@50 ⅌ bbl., as to quality. Bacon—the market is well supplied, and we note a decline; sales by commission merchants at $1 35 for hoground; hams, $1 40@1 45. Butter $2 75@3. Beans, $70 ⅌ bushel. Corn, $2@8 50 ⅌ bushel. Corn Meal, $10. Candles—tallow, $1 10@2 75. Dried Apples, $13@14 ⅌ bushel; do. Peaches, $10@ 0. Eggs, $1 50 ⅌ dozen. Flour—Superfine, $31@32; Extra, $34; Family, $36.—Hay—sales at $15@30 ⅌ cwt. Lard $1 60@1 65

gers made his way

THE CONSCRIP
the 7th Ohio caval
Somerset, Ky., an
number of letters
says the Democrat
a bloody business
be conscripted. T

You never saw
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what is going on
I tell you.

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Photograph No. 3

O. Raymond Brown, Notary Public

...ould.

...of Yankee thieves, captured ...nd imported from Europe, ar... Central cars yesterday, and ... to the care of Capt. Alexan... creatures were young, and ...nce of ruffians of the lowest ...er these wretches are des... for the South.

...cademy.—The distribution of ...nominis at this academy took ...y last in presence of a large ...tors, who, notwithstanding ..., assembled at the appointed ... the exercises. There were ...holars present, all entering ...le file to the music of the ...hop Magill was present, and ...rizes to the successful com...

... honors were the first of the ... recipient coming forward, ..., and the Bishop placed the ...d.

...OR SENIOR CIRCLE.

...st honors—Misses M Man... ...oy, M Keavy, M M Kenny, ...le, B Walthall, A Odell, E ...

...ond honors—Misses M Bla... ...K Pisa, M Mason, R Corr, ...Kenny, K Swank, L Hay...

...irst honors—Miss M C Cat...

... second honors—Misses L ...all, A Clash.

...IOR CIRCLE.

...st honors—Misses M Mesco, ...y, H M'Dowell, V Brannon, ...w, M E Hill.

...ond honors—Misses R Bal... ..., E Mallory.

... first honors—Misses M ...ond, E Stephens, B Guil... ..., C Boldt.

... second honors—Misses V ...ghorty, J Northrop, K Ren... A Hardie, L Cotegal, V ...L Purcell.

...es were composed of full... ...ed roses and other flowers; ...were green wreaths, with a ...rose; while the first crowns ...s were composed only of ...

... was awarded to Miss M. ...first medal to Miss Hamlin ...

... "solo, duet, and chorus, ... and dedicated to the ... was sung with much ... ...

...was appointed for secret session, for the examination of charges against some one or two members of the Conference, involving their integrity.

Rev. D. J. C. Slaughter was, at his own request, placed on the supernumerary list.

Financial and Commercial.

Since our last report specie has gone up considerably. We now quote $15 as the buying, and $16 as the selling price for gold. Silver is bought by the brokers at $12, and sold at $13.

BANK NOTES.—Southern bank notes are bought by the brokers at $2.75, and sold at $3.

BONDS AND STOCKS.—At the auction sale of Lancaster & Co., on Wednesday, bonds and stocks commanded the following figures: Confederate 8 per cent. coupons, 1881, 114; do., 1871, 112; registered bonds, 1868-'9, 110; convertibles, 113 to 115; 15 million loan coupons, 100; do. registered bonds, 153¾ to 155; Virginia registered bonds, 1891-'94, 257; do., 1890, 255; do., 1887, 257; registered bonds, past due, 197 to 198; North Carolina 8's, coupons, 225; city of Richmond 6's, 246; Lynchburg coupon bonds, 255; Norfolk bonds, registered, 165 to 166; Alexandria coupon bonds, 253; Va. and Tenn. railroad bonds, second mortgage, 242; Va. Central railroad bonds, second mortgage, 245; Va. Central railroad dividend bonds, 6 per cent., 210; R., F. and P. railroad 7 per cent. convertibles, 253; do. 6 per cent., 205; Orange and Alexandria railroad bonds, first mortgage, 6's, 230; Manassas Gap railroad, first mortgage, 6's, 150; Orange and Alexandria railroad stock, 56; Richmond Importing and Exporting Company, 930 to 960.

GRAIN.—The receipts of Grain are still very light. We have heard of sales of Wheat ranging from $10 to $15 per bushel, according to quality—the latter figure for a choice article. Corn is selling at from $15 to $18 per bushel, and very little in market.

COUNTRY PRODUCE AND VEGETABLES.—Bacon, hog round, $2.75; Lard $2.50; Butter $3.75; Eggs $4; Irish Potatoes $8; Sweet do. $10 to $12; Tallow Candles $3.75 to $4; Salt 40 to 45c. These are the wholesale rates.

In the city markets fresh meats are worth $1.25 to $1.50 for Beef and Mutton, and $2 for Pork; Chickens, $6 to $8 per pair; Ducks, $7 to $8 per pair; Butter, $4.50 to $5 per lb.; Sweet Potatoes, $2.50 per half peck; Irish Potatoes, $2 per half peck.

GROCERIES.—Coffee, wholesale, $9 per lb.; retail, $10; Sugar, $3 to $3.25; Sorghum Molasses, wholesale, $12 per gallon, and $14 to $15 at retail.

LIQUORS.—Whiskey, $55 to $65 per gallon; Apple Brandy, $45 to $50; high proof Rum, $50; French Brandy, $60 to $100.

LEATHER.—The supply of Leather in the market is somewhat improved. We quote Sole Leather $6.50 to $7.50 per lb.; Upper do., $7.50 to $8; Harness do., $5.50 to $6; Hides are quoted at $2.50 to $2.75 for dry, and $1.50 for salted green; Tanners' Oil, $4 to $5 per gallon.

TOBACCO.—The demand for the different brands of Tobacco is improved, and prices tending upwards.

THE "ENGLISH" IMPORTED GOODS.—The remaining cargo of the Margaret and Jessie, a blockade running steamer, captured by the Potomac, has been taken out to New York. Most of the original cargo had been thrown into the sea or burned before she was captured. A New York paper says:

Confederates were now landed. The town of Brownsville was set on fire by Confederate cavalry, but the Unionists resisted them and a bloody fight occurred. (?) The 15th Maine regiment was ordered to the support of the Unionists.

Gen. W. H. F. Lee, confined at Fortress Monroe for several months, has been sent to Fort-La fayette.

The steamer Sunnyside was destroyed by fire a few days ago, near Island No. 16, twenty-six miles below New Madrid. The cargo consisted of 1,300 bales of cotton, which, together with the boat, is a total loss. Thirty passengers, including eight ladies, were drowned in attempting to get ashore.

It is rumored that Gen. Gamble and Lieut. Gov. Gamble, of Missouri, will shortly tender their resignations.

An arrival from Havana brings later advices from Mexico. It is said that the Interventionists have been defeated in various engagements by the troops of the Juarez Government. It is also said that the party of the Republic is gaining strength with the people. Gen. Comonfort is at the head of the National troops. The arrival of Maximilian is anxiously looked for by the friends of the monarchy.

The Confederate steamer Georgia put into Santa Cruz, Tenneriffe, on the 15th ult., to obtain supplies of coal and provisions.

A lot of rebel documents were captured in the Cornubia, among them letters from Mr. E. De Leon, of Paris, to President Davis, in one of which he expresses the belief that there is no intention on the part of France to recognize the Confederacy.

Gold in New York, Monday, 147¾. Virginia sixes, 55.

EUROPEAN ITEMS.

The Mexican Consuls at Paris, Bordeaux, and Havre, had been compelled to cease the discharge of their duties. The Consuls of Guatemala were acting for them.

Earl Russell has proposed a basis of negotiation between Germany and Denmark on the Holstein question.

It is stated that the authority to build the rebel rams in France was given under the assurance that they were intended for the Chinese.

FROM TRANS-MISSISSIPPI.—A correspondent of the Mobile *Advertiser*, writing from Houston, Texas, gives the annexed news:

Investigations are being made into the alleged cotton frauds in Texas. No discoveries have yet been made, though it is believed there will be such, implicating several agents of the Government, if not officials.

Public meetings are being held all over Texas, and a serious revival of patriotism is in progress. Gov. Lubbock, Col. J. A. Wilcox, Judge Gray, Col. W. Carter, Judge Oldham, and Gen. Gano, are the principal speakers.

The Yankee General Franklin, with a force said to number 22,000, has been for several weeks slowly advancing from Vermillion, La., in the direction of Alexandria, on Red river. At this date his force is divided, one section being at Opelousas and the other at Washington. Alexandria is threatened; but, unless heavily reinforced, the Federals will hardly be able to reach that point, for Gen. Dick Taylor, with his force, is in a position to oppose their advance much further in that direction. A battle at or near Moundville is imminent, and we have not much doubt that the result will be favorable to our army.

Confederate money in Houston, which has been as low as twelve for one, is now five for one, and steadily advancing.

Our troops throughout the Mississippi Department are now well clothed, well fed and in the best of spirits.

In regard to the rumors about disaster among our troops west of the Mississippi river, the *Advertiser's* correspondent says: "Do not believe any report that may reach you that our troops in Texas, Louisiana and Arkansas are deserting or becoming demoralized or any cause. Such is not the case anywhere. On the contrary there was never more loyalty than at present among them, as the enemy will yet learn, if he ventures too far within our borders. Do not give yourselves any uneasiness about us on this side; we are all right, and will keep up our end of the pole."

The Federals hold Little Rock, but no other point in this vicinity, and at present seem disposed to remain very quiet.

There is an abundance of everything to eat all through this country—plenty of salt at $3 per bush

Photograph No. 5 O. Raymond Brown, Notary Public

RICHARD B. WASHINGTON, being first duly sworn, deposes and says, as follows:

By Mr. Harrison:

1 Q. Mr. Washington, please state your place of residence, your age and your occupation.

A. My present place of residence is Richmond, Virginia; I am in my 27th year; I am a clerk in the employ of John L. Williams & Sons.

2 Q. Mr. Washington, did you make a comparison of some of the quotations and sales of stocks and bonds shown on what is called the record of exhibits filed in this case by the plaintiff—I refer now to Plaintiff's Revised Exhibit No. 2—with the book of Davenport & Co. introduced in evidence, being the "Blotter," showing the record of sales of stocks and bonds made by them during the year 1863?

A. Yes; Mr. Le Gendre and myself checked those up, and then I went back over it and compared them, and also compared them with the Dispatch, I believe.

3 Q. I hand you a statement, which I will ask you to file with your deposition as "Exhibit No. 1," containing certain data in relation to the sales of the securities named thereon. Will you please state if that is the result of the work which you did, and which you have just mentioned in your preceding answer?

A. Yes, sir, this is one of them. I believe there were several.

By Mr. Conrad:

4 Q. Do you know that they are accurate, and correct?

A. Yes, sir.

MR. HOLT: The defendant objects to the exhibit just filed, upon the ground that it is irrelevant and immaterial; and upon the further ground that it does not fall within the purview of the supplemental testimony that is now being taken at the suggestion of the Master.

By Mr. Harrison:

5 Q. Now, Mr. Washington, the first reference on the exhibit you have just filed is to Davenport & Co.'s folio, page 36. Does that mean the Blotter? If so, please turn to that page and see if you find there the record of the sale described on your exhibit.

A. I would not recognize the book by its name, but would recognize it when I see it. (Witness here turns to page 36 of the Blotter.)

6 Q. Do you find on that page the entry of the sale under date of April 8th, 1863, of Virginia State sixes, at 114?

A. Yes, sir, here it is, $5,000 sold at the price of 114.

7 Q. Now on page 38 do you find the entry of the sale of $1,400 Virginia State sixes?

A. Yes, here it is, 1400 at 114, and 500 at 112; and another 500 at 114.

8 Q. Those entries then which appear on your exhibit, are found on pages 36 and 38 of Davenport & Co.'s book—the Blotter?

A. Yes.

9 Q. You say you checked those entries with the Dispatch, as of those dates, and found the sales advertised there, as shown on your exhibit?

A. Yes. Have you the other exhibit? I can tell better by that.

NOTE: An adjournment was here taken to 3:15 P. M. at which time the deposition of the witness was resumed, as follows:

By Mr. Harrison:

10 Q. Please look at page 330 of the printed record, Plaintiff's Exhibit No. 2, and state whether or not any quotation is shown of Virginia State sixes, under date of April 8th, 1863.

A. Yes.

11 Q. What is it?

A. Virginia sixes, registered, Davenport & Co., 112, asked 114.

12 Q. Now look at page 36 of Davenport & Co.'s Blotter, and state whether there is any sale of Virginia State sixes corresponding to that quotation.

A. On page 36 of Davenport & Co.'s book, I see Virginia State sixes, 5,000 sold at the rate of 114.

13 Q. Now look at page 330 of the printed record, Plaintiff's Revised Exhibit No. 2, and state whether there is any quotation of Virginia State sixes for April 8th, 1863?

A. Yes.

14 Q. What is it?

A. Virginia sixes, registered, Davenport & Co., at 112 and 114.

15 Q. Now look on page 38 of Davenport & Co.'s Blotter, and state whether or not any sales of Virginia sixes were made on that day, corresponding with that quotation.

A. On page 38, I find Virginia State sixes, 1,400 were sold at rate of 114; 500 were sold at rate of 112, and 500 again, at the rate of 114.

16 Q. Now look at page 335 of the printed record, Plaintiffs Revised Exhibit No. 2, and state what quotation is shown there of James River & Kanawha stock, under date of May 2, 1863?

A. On May 2, 1863, Davenport & Co., 20, James River & Kanawha Company.

17 Q. Those are the quotations?

A. Yes, sir.

18 Q. Now look at page 48 of Davenport & Co.'s Blotter, and see whether there are any sales of that date corresponding with that quotation?

A. James River & Kanawha, 3 shares were sold at $20 per share.

19 Q. Do you find any other sales on that day?

A. James River & Kanawha, 128 shares at $20 a share.

20 Q. For whose account?

A. For the account of John Jones & Co., the first one—and John Jones for the second one.

21 Q. Now look at page 337 of the printed record, Plaintiff's Revised Exhibit No. 2, and state what market quotation is there shown of Virginia Central Railway stock under date of May 2, 1863?

A. Here it is—Davenport & Co., 94; that is the quotation.

22 Q. Now look at page 48 of Davenport & Co.'s Blotter, and state whether any sale is there recorded of Virginia Central Railway stock, corresponding with that quotation.

A. On page 48, the Virginia Central Railroad stock, 10 shares, were sold at $94 per share.

23 Q. Now look again on page 337 of Plaintiff's Revised Exhibit No. 2, printed record, and state if there is any market quotation shown of Virginia Central Railroad stock under date of July 22, 1863.

A. Under date of July 22, 1863, Davenport & Co., 116 is the quotation.

24 Q. Now look at page 62 of Davenport & Co.'s Blotter and state whether any sale is there recorded of Virginia Central Railroad stock, corresponding with that quotation.

A. On page 62 of Davenport & Co.'s Blotter there were 18 shares of Virginia Central Railroad stock sold at 116, on that day, July 22, 1863.

25 Q. Now look at page 339 of the printed record, Plaintiff's Revised Exhibit No. 2, and states what quotation is there shown under date of May 16, 1863, of Richmond & Danville Railroad Co.'s stock.

A. On May 16, 1863, Davenport & Co., 121 is the quotation.

26 Q. Now look at page 54 of the Davenport & Co.'s Blotter, and state whether or not on the same day any sale of Richmond & Danville stock is shown, corresponding with that quotation.

A. Richmond & Danville Railroad stock was sold, 10 shares at the rate of 121, on that date.

27 Q. Now look on page 341 of the printed record, Plaintiff's Revised Exhibit No. 2, and state what quotation is there shown under date of April 8, 1863, of Farmers Bank stock?

A. April 8, 1863, the quotation was 131.

28 Q. Now look at page 36 of Davenport & Co.'s Blotter, and state whether on the same date any sale is shown of that stock, corresponding with that quotation?

A. Farmers Bank of Virginia, 40 shares at 131, sold.

29 Q. I now hand you, and ask you to file as Exhibit No. 2 with your deposition, a schedule of sales taken from the books of Davenport & Co. relating to the plaintiff's revised exhibit No. 2, showing sales of Richmond, Fredericksburg & Potomac stock, Virginia Central Railroad stock, James River and Kanawha stock, Richmond & Danville Railroad Co.'s stock, Virginia & Tennessee Railroad stock, and Richmond & Petersburg Railroad stock, under the dates in 1863 shown on that schedule. Please state whether you prepared that from the Blotter of Davenport & Co.

A. This is the one I prepared from Davenport & Co.'s book, right here.

30 Q. Please state if that is an accurate transcript from the Blotter of Davenport & Co. which has been introduced in evidence.

A. This was taken direct from the Blotter of Davenport & Co.

31 Q. By you?

A. By me—by Mr. Le Gendre and myself together, and I checked it up.

32 Q. And is correct?

A. And is correct.

33 Q. Now I hand you a schedule of sales from Davenport & Co.'s books, relating to the plaintiff's revised exhibit No. 2, showing sales of the Farmers Bank stock, the Exchange Bank stock, and the Bank of Virginia stock, under the dates in 1863, shown on that schedule. Please examine it and state whether you prepared it, and whether it is an accurate transcript from the Blotter of Davenport & Co.

A. This was prepared by me, and is an accurate transcript from Davenport & Co.'s Blotter.

34 Q. Please file it with your deposition, marked "Exhibit No. 3."

A. I file it herewith, marked as requested.

35 Q. I now hand you a schedule showing sales of Virginia State bonds under the dates in 1863 shown on said schedule, showing also the number of the page of Davenport & Co.'s folio. Please examine it and say whether you prepared it, and whether it is a transcript from the blotter of Davenport & Co., and whether it is accurate.

A. This is a transcript that was prepared by Mr. Le Gendre and myself, and was copied by me and checked up by Mr. Le Gendre and myself, from Davenport & Co.'s Blotter, and is accurate.

36 Q. Please file it with your deposition as Exhibit No. 4.

A. I file it herewith, marked as requested.

Cross-Examination:

By Mr. Holt:

1 XQ. How many exhibits have you filed with your deposition?

A. Four, I believe, sir.

2 XQ. And those exhibits show a list of sales of bonds and stocks by Davenport & Co.?

A. Yes, sir.

3 XQ. You say that you made them up from the books of Davenport & Co.?

A. Yes, sir, they were taken off of the Blotter of Davenport & Co.

4 XQ. How do you know that that is a book of Davenport & Co.?

A. I do not know, of my own personal knowledge, that that is a book of Davenport & Co., but it shows, I believe, that the sales were made by the firm.

MR. CONRAD: They were produced to you as the books of Davenport & Co.?

WITNESS: Yes.

5 XQ. Where did that Blotter come from?

A. My understanding is that this Blotter was taken from the old vault in the room there (indicates room).

6 XQ. Did you take it therefrom?

A. No, I did not.

7 XQ. Are you familiar with the handwriting in that book?

A. I am not.

8 XQ. Did you make the entries in it?

A. I did not.

9 XQ. Do you know who did?

A. I do not.

10 XQ. You have no personal knowledge with respect to that book, at all, Mr. Washington, as I understand you?

A. No personal knowledge.

11 XQ. Then when you made up these exhibits you made them from the book which you have described, but you do not know who made up the book?

A. No, sir.

12 XQ. You did not take those exhibits where they purport to give the sale prices of stocks, from any newspaper, did you?

A. I do not understand the question. Do you mean did I compare them with any newspaper?

13 XQ. No. You made up the exhibits—you got the data for your exhibits out of this book supposedly of Davenport & Co.; you did not get the data for those exhibits out of any newspaper, did you?

A. No; the first transcript was made direct from the Blotter of Davenport & Co., and where the Dispatch quotation is shown it was compared with the paper, only.

14 XQ. How many sales are mentioned in your first exhibit?

A. I have not the faintest idea, without counting them. (Witness here counts them.) Twenty-four.

15 XQ. What dates do they cover? What period of time do they fall within?

A. April, '63, and July, '63.

16 XQ. Twenty-four sales then, occurring in the months from April, '63, down to and including July, '63; is that right?

A. Yes, sir, that's right.

17 XQ. Are any of those sales given in the plaintiff's revised exhibit No. 2, printed in the record in this cause?

A. Yes, sir.

18 XQ. How many of them?

A. I believe all of them are given in plaintiff's revised exhibit No. 2, except one that was compared with the Dispatch.

19 XQ. How many of those 24 sales were bond sales, and how many were stock sales?

A. Sixteen of them were of bonds, and 6 of stock—that is, including the one that was compared with the Dispatch, and that does not show whether it is stock or bonds.

20 XQ. How many sales are given in your exhibit No. 2?

A. Thirty-four—all of which are stock.

21 XQ. How many of those are set forth in the plaintiff's revised exhibit No. 2?

A. Well, I have not compared this one; I can pretty quickly tell though.

22 XQ. Within what periods did those sales occur?

A. They fall between April, '63, and October, '64, inclusive.

23 XQ. How many sales are embraced in your exhibit No. 3?

A. 17.

24 XQ. How many of them are bonds and how many stocks?

A. They are all bank stock.

25 XQ. Within what period of time did they fall—or during what period were those sales made?

A. They were made during the period from April, '63, to October, '64, inclusive.

26 XQ. How many sales are embraced in your exhibit No. 4?

A. 137.

27 XQ. What period of time do they cover?

A. From April, 1863, to March, 1864, inclusive.

28 XQ. Do any of those sales embrace stocks, or are they all bond sales?

A. All on this exhibit seem to be Virginia sixes, bonds, and Virginia Treasury Notes; also Virginia Treasury Bonds.

29 XQ. They are not stocks then, in any company?

A. No, they are not stocks of any company, at all.

30 XQ. Now, all of these exhibits, as I understand you, Mr. Washington, were made up from what you have supposed to be the books of Davenport & Co.?

A. That is true.

31 XQ. You have not made up those lists of sales embraced in those exhibits, or either of them, from any newspaper publication of quotations, have you?

A. They are not made up from any newspaper publications; they are made up from the book of Davenport & Co.

32 XQ. Do those four exhibits cover all of the sales that are disclosed on the books of Davenport & Co.?

A. No.

33 XQ. There are other sales, are there?

A. There are other sales.

34 XQ. Covering other periods of time?

A. Yes.

35 XQ. How old are you, Mr. Washington?

A. I am in my 27th year.

36 XQ. How long have you been in business in the city of Richmond?

A. I have been with John L. Williams & Sons since March of this year.

37 XQ. Did you ever know Davenport & Co.?

A. No.

38 XQ. Did you ever know any member of the firm of Davenport & Co.?

A. No.

39 XQ. Did you ever work in their office, at all?

A. No.

40 XQ. Have had no business transactions with them, or either member of the firm?

A. None whatever.

41 XQ. I believe you have already stated that you have no personal knowledge with respect to the genuineness of this book of Davenport & Co.?

A. Yes.

42 XQ. You have told us all that you know about it?

A. Yes.

And further this deponent saith not.

(Signature waived.)

MR. HARRISON: We will ask the stenographer to copy into the record the market quotations shown in the Richmond Dispatch, of Richmond, Va., which are on file in the State Library, in the city of Richmond, under the following dates: April 8, 1863; April 18, 1863; May 2, 1863; May 16, 1863; June 16, 1863; July 22, 1863; January 4, 1861, and November 2, 1860.

MR. HOLT: To the copying into the record of the quotations requested, the defendant objects; first, because they are irrelevant; second, immaterial; and third, because they are beyond the purview of the direction of the Master.

NOTE: The following lists of quotations were copied from the Richmond Dispatch, of the dates mentioned, by the Stenographer, pursuant to agreement of counsel.

RICHMOND DISPATCH.

Friday Morning, Nov. 2, 1860.

Sales of Stock in Richmond.

By John A. Lancaster and Son, No. 197 Main Street, two doors above Farmers Bank, for the week ending November 1, 1860.

Virginia 6 per cent. registered bonds, sales $89.

Richmond City Bonds, sales $90 and int.

Petersburg City Bonds, last sales $90—no recent sales.

Lynchburg City Bonds, last sales $90—no recent sales.

Norfolk City Bonds, last sales $78—no recent sales.

Exchange Bank Stock, sales $104½.

Farmers Bank Stock, offered at $102—no recent sales.

Bank of Virginia Stock, offered at $72.

Bank of the Commonwealth Stock, last sales $97.

Richmond and Danville R. R. Bonds, guaranteed by State of Virginia. No recent sales.

Virginia Central R. R. Bonds, guaranteed by State of Virginia. No recent sales.

City of Petersburg Bonds, guaranteed by State of Virginia, No recent sales.

Old Dominion Insurance Co. Stock, last sales $28.

Richmond Fire Asso. Stock, last sales $40.

Va. Fire and Marine Ins. Stock, last sales $40.

Merchants Insurance Stock, last sales $75½.

Virginia Central R. R. 1st mortgage bonds, $85 and int.; no recent sales.

Virginia Central R. R. 2nd mortgage bonds, $82½ and int.; no recent sales.

Virginia and Tennessee R. R. 1st mortgage bonds; no recent sales.

Virginia and Tennessee R. R. 2nd mortgage bonds; no recent sales.

Virginia and Tennessee R. R. 3rd mortgage bonds; no recent sales.

Orange and Alexandria R. R. 6 per cent. bonds, last sales $81 and int.—no recent sales.

Orange and Alexandria R. R. 8 per cent. bonds, last sales $92 and int.

Richmond and York River Railroad 8 per cent. bonds, last sales $90.

Manassas Gap R. R. 6 per cent. bonds, offered at $65.

South-Side R. R. Bonds; no recent sales.

South-Side R. R. Bonds, guaranteed by Petersburg, no recent sales

Richmond, Fredericksburg and Potomac Railroad Stock, sales $80.

Virginia Central Railroad Stock, sales $50.

Richmond and Petersburg Railroad Stock, last sales $64.

Richmond and Danville Railroad Stock, sales $60.

James River and Kanawha Stock, last sales $18½.

Virginia Life Insurance Stock, last sales $112.

Insurance Company of State of Virginia, last sale, on time, $115.

RICHMOND DISPATCH,

Friday Morning, Jan. 4, 1861.

Sales of Stocks in Richmond.

By John A. Lancaster & Son, No. 197 Main Street, two doors above Farmers Bank, for the week ending January 2, 1861.

Virginia 6 per cent. registered bonds, sales $80.

Richmond City bonds, sales $87½.

Petersburg City bonds—no recent sales.

Lynchburg City bonds—no recent sales.

Norfolk City bonds—no recent sales.

Exchange Bank stock, $101 offered.

Farmers Bank stock, last sales $100.

Bank of Virginia stock, last sales $70.

Bank of the Commonwealth Stock, last sales $94.

Richmond and Danville R. R. bonds, guaranteed by State of Virginia; no recent sales.

Virginia Central R. R. Bonds, guaranteed by State of Virginia; no recent sales.

City of Petersburg Bonds, guaranteed by State of Virginia, no recent sales.

Old Dominion Insurance Co. stock, last sales $29.

Richmond Fire Asso. stock, last sales $38.

Virginia Fire and Marine Insurance stock, no recent sales.

Merchants Insurance stock, sales $75 on time.

Virginia Life Insurance Co. stock, last sales $115.

Insurance Co. of State of Virginia, last sales $115.

Virginia Central R. R. 1st mortgage bonds, last sales $84.

Virginia Central R. R. 2nd mortgage bonds, no recent sales.

Virginia and Tennessee R. R. 1st mortgage bonds, no recent sales.

Virginia and Tennessee R. R. 2nd mortgage bonds, no recent sales.

Orange and Alexandria R. R. 6 per cent. bonds, no recent sales.

Orange and Alexandria R. R. 8 per cent. bonds, last sales $90.

Manassas Gap R. R. 6 per cent. bonds, no recent sales.

South-Side R R. bonds, no recent sales.

South-Side R. R. bonds, guaranteed by Petersburg, last sales $88.

Richmond, Fredericksburg and Potomac Railroad stock, last sales $76½.

Virginia Central Railroad stock, last sales $50.

Richmond and Petersburg Railroad stock, last sales $64.

Richmond and Danville Railroad stock, no recent sales.

James River and Kanawha stock, no recent sales.

RICHMOND DISPATCH.

Wednesday Morning, April 8, 1863.

FINANCIAL AND COMMERCIAL.

Tuesday, April 7, 1863.

SPECIE AND BANK NOTES:—We continue to quote gold at $4 premium, selling rate, and with more firmness in the market reported. Silver may be quoted at $3.75 premium. Bank notes have advanced. The brokers today were asking 75 per cent.

BONDS AND STOCKS:—At Messrs. Davenport & Co.'s auction sale today, which was largely attended, Confederate bonds (15M. loan) coupons, brought 137; do. registered, 116 a 118; do. do (100M. loan) registered, 1872, 106; do. do. 8 per cent. convertibles, 106½ a 107; Confederate Treasury Notes, interest bearing, par and int.; Virginia sixes, registered, 112 a 114; Georgia sevens, 149 a 150; Manassas Gap R. R. bonds, sixes, 58; Orange and Alexandria R. R. bonds, 2nd mortgage sixes, 102; Traders Bank stock, 121; Bank of Commonwealth, 121; Farmers Bank, 131 (a large advance); Bank of Richmond, 100 a 101; Bank of Monticello, $100; James River and Kanawha Co., 19; Richmond and Liverpool Packet Co., 620; Old Dominion Insurance Co., 35½; Va. Fire and Marine Insurance Co., 47. All the bonds were sold with interest added to the date of sale.

PRODUCE, GROCERIES, Etc.:—Apples, $37 a 50 per bbl. very few in market; Butter in demand at $3 a 3.25 per lb.; Bacon—hoground, $1.35 a 1.40; Beeswax, $1.50 per pound; Beans, $15 a 18 per bushel; Corn, $10 per bushel, very scarce and in demand; Corn Meal, $10 a 12 per bushel; Candles, $3 a 3.25 per pound; Dried Apples, $13 a 14 per bushel; Dried Peaches, $15 a 18 per bushel; Flour—Superfine, $31 a 32; Extra, 34; Family, $36 per bbl.; Hay, $8 a 8.50 per cwt.; Lard, $1.50 a 1.60 per pound; Potatoes—Irish, $8 a 10; Sweet, $10 a 11 per bushel; Peas, $15 a 18 per bushel; Oats, $6.50 per bushel; Seeds—Timothy, $7, season over; Clover, $24 a 25; Tobacco—no sales of leaf for two days past, and we make no change in quotations; the breaks are somewhat larger. The market for manufactured is less animated. Wheat—nothing doing and we repeat the nominal quotations of $4 a 4.50 per bushel. Sales have been made for horse feed at $6 a 6.50. Dressed Fowls are very high, and hucksters in the market demanding $8 a 12 per pair for native chickens; Turkeys are held by commission merchants at $1.25 per pound; Eggs $1.50 per dozen; Sugar, Brown, $1.20 a 1.30 per pound, as to quality; Molasses $10 a 12 per gallon; Coffee, $4 a 5 per pound; Salt, 50c. per pound; Rice, 30 a 35c.

RICHMOND DISPATCH.

Saturday Morning, April 18, 1863.

FINANCIAL AND COMMERCIAL.

Friday, April 17, 1863.

SPECIE AND NOTES:—Gold was heavy today, and some of the brokers were only asking $1.75 premium. The buying rates may be quoted at $4 a $4.25 premium. Bank notes are selling at 75 a 80 per cent. premium—the inside rate for Vir-

ginia's. For Confederate Treasury Notes, old issue, the brokers are now offering 2½ per cent. premium.

BONDS AND STOCKS:—At Messrs. Lancaster & Co.'s sale this week, Confederate Bonds; (15,000,000) coupons, brought 158½ a 166½ and int.; do. do. (100,000,000) short dates, registered, 104 and int., long dates 109 a 110½ and int.; Virginia sixes, registered, 112 a 113 and int.; do. do. coupons (4 coupons on), 160; North Carolina eights, 130 and int.; Tennessee sixes (2 coupons on), 136; Richmond City bonds, due '69, '70, 133 and int.; do. do. due '80, 138 a 139; Old Dominion Insurance Co. stock, 39¾ a 40; Insurance Company of the State of Virginia, 39¾ a 42¾; Insurance Company of the Valley of Virginia, 64; Importing and Exporting Co., 731 a 750; Bank of Virginia, 89½; Bank of the Commonwealth, 122; Farmers Bank, 128; Midlothian Coal Mining Co., 110; James River and Kanawha Canal Co., 20½; Manchester Cotton and Woolen Manufacturing Co., 215; Richmond, Fredericksburg and Potomac Railroad stock, 110 a 111; Virginia Central Railroad stock, 100½ a 101½; Orange and Alexandria Railroad stock (common), 27½; Confederate Treasury Notes, interest bearing, 98½ a 99½ and int.

PRODUCE, Etc.:—Apples, $30 a 50 per bbl., as to quality; Bacon—the market is well supplied, and we note a decline; sales by commission merchants at $1.35 for hoground; Hams, $1.40 a 1.45; Butter, $2.75 a 3; Beans, $20 per bushel; Corn, $8 a 8.50 per bushel; Corn Meal, $10; Candles—Tallow, $3.10 a 3.75; Dried Apples, $13 a 14 per bushel; do. Peaches, $16 a 18; Eggs, $1.50 per dozen; Flour—Superfine, $31 a 32, Extra, $34, Family, $36; Hay—sales at $15 a 20 per cwt.; Lard, $1.60 a 1.65 per pound, retailing at $2; Pease $20 per bushel; Oats, $5 per bushel; Potatoes—Irish, $10, Sweet, $10 a 11; Seeds—Timothy, $7.50, Clover, $24 a 25; Wheat, $6 a 7 per bushel.

TOBACCO:—The market is lower and we now quote as follows: Inferior Lugs, $14 a 15; good do. $16 a 20; common

Leaf, $20 a 25; good do. $27 a 40; and Flue, $45 a 55; fine Manufacturing Leaf, $50 a 75. Receipts very light. The market for manufactured continues dull.

GROCERIES, Etc.:—Sugars, $1.13 a 1.35; Molasses, $9 a 11 per gallon; Coffee, $3.87½ a 4.50; Salt, 40 a 50c.; Rice, 15 a 30c.; Soap, 50 a 70c.

AUCTION SALE:—At the auction sale of Robinson, Adams & Co., yesterday, choice brown Sugar sold at $1.14 a 1.30; White clarified do., at $1.75; Molasses, $9.50; Coffee, $4; Bacon, hoground, $1.19 a 1.28; Tallow Candles, $3.10; adamantine do., $4.55; Salt, 38c.; Potatoes, $10; Nails, $75 a 78.

RICHMOND DISPATCH.

Saturday Morning, May 2, 1863.

FINANCIAL AND COMMERCIAL.

Friday, May 1, 1863.

SPECIE AND BANK NOTES:—The market is dull at last quotations—$4 premium for gold, $3.75 for silver, and 65 a 70 per cent. for bank notes.

BONDS AND STOCKS:—At Messrs. Davenport & Co.'s sale, today, the following prices were obtained: Confederate Bonds, 15M. loan, coupons, 195, closing at 192 for 16,550; do. do. registered, 121 a 122; do. do. 100M. loan, 106½ a 107; do. do. new issue, eights, 102 a 103; do. do 8 per cent. convertible, 106 a 108; Va. 6's, registered, 111¼ a 111½; North Carolina bonds, old issue, 173½; Missouri 6's, 4 coupons, 154; Va. and Tennessee Railroad bonds, 2nd mortgage, 121 a 123½; Richmond and Liverpool Packet Co. stock, 650; 1 share Richmond Importing and Exporting Co., 725; Traders Bank, 117; Bank of Richmond, 98 a 99; Virginia Central R.R. 94; James River and Kanawha Canal, 20; $10,500 coupons of the 15M. loan, 161; $1000 Alabama bank notes, 158½.

PRODUCE AND PROVISIONS:—The Bacon market varies, according to quality, from $1.10 to 1.30 for hoground; some that is badly salted is run off at the first-named price, while as high as $1.35 has been obtained for an extra fine article, within two days past; Beans, $18 a 20 per bushel; Butter, $2.25 a 3 per pound; Corn, $6 a 6.50 per bushel; with an advancing tendency. Corn Meal is unsettled, sales at $7.50 per bushel; Dried Apples, $12.50 a 13; do. Peaches, $18 per bushel; Flour—Superfine, $31 a 32; Extra, $34; Family, $35 per bbl.; Eggs, $1.25 per dozen; Hay—sales at $15 per cwt.; Lard, $1.65 a 1.70 per pound; Oats, $5 a 5.50 per bushel; Potatoes—Irish, $8 a 10, Sweet, $10 a 11; Pease, Black-eyed, $18 a 20 per bushel; Wheat, $6.50 a 7 per bushel.

TOBACCO: There is no new feature in the tobacco market, except a continued activity in the demand for the finer qualities, which are scarce. We correct our quotations from actual sales, as follows: Common Lugs, $10 a 15½; good, $16 a 22½; common Leaf, $25 a 30; good, $35 to 45; fine Shipping, $50 to 57½; fine Manufacturing Leaf, $75 to 100, and Wrappers of bright color from $100 to 205.

GROCERIES: Sugars, $1.20 to 1.40—the latter the retail price; Molasses, $10 to 12 per gallon; Coffee, $4 to 4.50; Tea, $10 to 14; Rice, 20 to 25c.; Salt, 45 to 55c. per pound; Soap, 50 to 60c.

RICHMOND DISPATCH.

Saturday Morning, May 16, 1863.

FINANCIAL AND COMMERCIAL.

Friday, May 15, 1863.

MONEY, BONDS, Etc.:—The brokers have had a dull season for the past ten days. The transactions in gold have been confined to occasional sales at $4.25 premium. Nothing of

importance in Bank Notes. At Messrs. Davenport & Co.'s auction sale, today, Confederate Treasury Notes, interest bearing, were sold at 98½ a 99; also the following bonds, with interest added: Confederate Bonds, coupon, 15 million loan, 188 to 184; do. do 100 million loan (1868 to 1871) 102¼ to 103; do. do. registered (1881), 106; Virginia sixes, 111¾ to 112; Va. Central R.R. bonds, first mortgage, 125; also North Carolina 6's, old issue, at 171 flat; and the following stocks: 2 shares Richmond and Liverpool Packet Co., $645; 9 do. Importing and Exporting Co., $735; 10 do., Richmond and Danville R.R. Co., 121; 3 do. Richmond and York River R.R. Co., $50.

PRODUCE, Etc.:—Breadstuffs continue scarce and high. Corn is nominally $8.50 per bushel, and Corn Meal, $9. Wheat, $6.50 a 7 per bushel; there is but a limited supply of flour in market, and we give the quotations as follows: Superfine, $31 a 32; Extra, $35; Family, $36 per bbl. Oats, $5 a 5.50 per bushel; Irish Potatoes, $8 a 9 per bushel; Sweet, $10 a 11; Bacon firm at $1.35 for hoground; Baled Hay, $12 per cwt.; Butter, $2.50 to 3.50, the latter at retail.

TOBACCO:—There have been no recent sales in public, and there is no data by which to fix quotations. We will give this in our next semi-weekly report.

GROCERIES, Etc.:—The following prices were obtained at the auction sale of Robinson, Adams & Co. today: Common Sugar in hhds., $1.21 to 1.23; in barrels, $1.22 to 1.27; Molasses, $10.30 per gallon; Coffee, $3.85 to $4.; Black Teas, $6.30 to 6.70; Young Hyson and Imperial, $7; Bacon, $1.40; Peanuts, $11.75 a 12 per bushel; Dried Apples, $11.50 to 12.25; Candles, $2.75 per lb.; Rice, 18 to 20c.; Clover Seed, $20 per bushel; Potatoes, $6.50 to 7.25 per bushel

RICHMOND DISPATCH.

Tuesday Morning, June 16, 1863.

FINANCIAL AND COMMERCIAL.

Thursday, June 15, 1863.

SPECIE AND BANK NOTES:—The rise in the "precious metals" continues, and curiosity will soon be excited to discover to what height of premium they will go. If there were only one hundred barrels of flour in Richmond, prices would in a very short time go up to a "pretty figure," and so, when the amount of gold offered for sale is reduced to a mere handful, as comparatively speaking it is today, we should not be surprised that the premium ranges high, very high. The brokers are now offering $7.50 for $1 in gold, and offering to sell, when they have any, at $8 a 8.50. Bank notes are now quotable at 90 a 95 per cent. premium—auction sales of $5,650 a 92½.

BONDS AND STOCKS:—The market continues active. At Messrs. Davenport & Co.'s sale, last week, Confederate registered bonds, 8's, 1868-'72, brought 102¼ a 103½; do. do 1876-'81, brought 104 a 106½; do. do. 15 m. loan, coupon, 194 a 196; Va. sixes, registered, long date, 130½. $125,000 R. & D. R. R. bonds, sixes, at 133 a 137½; Richmond Importing and Exporting Co. stock, $1,490, now held, we learn, at $2,000. We note private sales, since, of N. Carolina sixes at 227½; do. do. eights, at 133 and int.; Merchants Insurance stock at 95; James River and K. Canal, 22; Richmond Fire Asso., 37½.

PRODUCE, PROVISIONS, Etc.:—The following quotations are wholesale; retail prices are fixed according to the views of the dealers: Bacon, hoground, $1.45 a 1.50 per lb.; Beans, $15 a 16 per bushel; Butter has declined, and we now quote it at $1.50 a 1.75 per lb.; Corn—very little in market, it commands $10 per bushel readily; Corn Meal, $11 a 12 per

bushel—scarce and in demand. Dried Fruit—Apples, $10 a 12; Peaches, $15 a 18 per bushel. Eggs in demand at $1.50 per dozen; Forage has a declining tendency; we quote Hay at $9 a 10 per one hundred pounds; Fodder and Sheaf Oats worth about the same, very little coming in; Flour—Superfine, $31 a 32; Extra, $32 a 33; Family, $36 a 37 per bbl.; Lard, $1.50 a 1.60 per lb.; Oats, $6 per bushel; Pease, $15 a 16 per bushel; Potatoes—few in market; we quote Irish at $9 a 10 per bushel; Wheat, $6.50 a 7 per bushel.

GROCERIES:—Sugars have declined—we now quote prime Brown in hhds., at $1.35 a 1.40; in bags and bbls., at $1.40 a 1.50 per lb.; Molasses, $10.50 a 11 per gallon; Coffee, $3.75 a 4.25 per pound; Tea—Black, $8 a 10 per pound; Green, $8.50 a 11; Salt, 40 a 45c. per pound; Rice, 18 a 20c. per lb.; Candles—Tallow, $2.50 a 2.75, Adamantines, $4.50 a 4.75; Sperm, $6.50 a 7 per pound; Soap, 60c. per pound.

TOBACCO:—The breaks that have increased for a few days past, by persons pushing their tobacco into market to avoid the 8 per cent. tax. No change in prices. We quote inferior Lugs, $14 a 16; good do. $17 a 19; fine do. $20 a 25; inferior Leaf, $35 a 40; good do. $45 a 50 a 60; good Manufacturing, $65 a 70; fine do. $80 a 150; fine bright Wrappers, $200 a 260; Shipping, $45 a 60.

LEATHER:—Sole, $3.50 a 4 per pound; Harness, $3.75 a 4.25; Upper, $4.50 a 5; Calfskins, none in market; would bring $325 a 400 per dozen. Green Salted Hides, 95 a $1 per pound; Dried do. $1.25 a 1.50.

LIQUORS:—Good Whiskey, $30 a 35; Apple Brandy, $26 a 28; French Brandy (imitation), $50 a 60; a pure article, $100 per gal.

RICHMOND DISPATCH.

Wednesday Morning, July 22, 1863.

FINANCIAL AND COMMERCIAL.

Monday, July 20th, 1863.

SPECIES AND BANK NOTES:—The market may be reported firm at last quotations, viz.: $9 premium for gold, selling rate; $8 prem. buying price. Silver is 50 cents below these figures. The demand is small, and offerings "few and far between." Bank Notes are again higher. The brokers are paying $1.50 premium, and asking $1.70 a 1.75. Nothing doing in Sterling exchange.

BONDS AND STOCKS:—At Messrs. Davenport & Co.'s auction sale, last week, prices went up at an astonishing rate. North Carolina bonds were sold at 300; Virginia registered do., 160; City of Richmond do., 165; Richmond and Danville Railroad do., 171; Central Railroad stock, 116; Bank of Richmond, 110; Richmond and Liverpool Packet Co., 680. We quote Confederate Bonds, 100 M. loan, at 103 a 109½ and int.; do. do. 15 M. loan, held at 200—no recent sales; do. do. 7's, 100; Va. coupon bonds, four coupons on, 325; Bank of the Commonwealth, 135; Chesapeake & Ohio Canal guaranteed bonds, 150; Merchants Insurance Co., 95; Insurance Co. State of Virginia, 42½.

PRODUCE, PROVISIONS, Etc.:—Bacon, very scarce and advancing; we quote hoground at $1.50 a 1.60; Butter has advanced, we quote at $2 a 2.50 per pound; Cheese, $1.50 a 1.75 per pound; Dried Fruit—Apples, $10 per bushel; Peaches, $16 per bushel; Eggs, $1.50 a 1.75 per dozen; Hay—held $9 a 10, as to quality; Lard, $1.55 a 1.60 per lb.; Potatoes, new Irish, $10 a 15 per bushel; Corn, $9.50 a 10 per bushel; Corn Meal, $10 a 10.50 per bushel; Flour is in demand at the fol-

INDEPENDENT SCHEDULE OF SALES FROM D. & Co's. BOOKS RELATING TO

PLAINTIFF'S EXHIBIT—Quotations and Sales of Virginia State Bonds

Exhibit R. B. Washington. No. 1. O. Raymond Brown, Notary Public.

D. & Co. Folio No.	Plaintiff Folio No.	Date.	On Account of	Name of Security	Amount	Rate
36	330	4/ 8/63	James River & Kanawha.....	Va. State 6's.....	$5,000	114
38	330	4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	1,400	114
		4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	500	114
		4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	500	112
48	330	5/ 2/63	James River & Kanawha.....	Va. State 6's.....	10,000	111¼
		5/ 2/63	James River & Kanawha.....	Va. State 6's.....	3,000	111¼
		5/ 2/63	James River & Kanawha.....	Va. State 6's.....	2,000	111½
58	330	6/16/63	James River & Kanawha.....	Va. State 6's.....	10,000	130½
62	330	7/17/63	Williams & Carrington.....	Va. State 6's.....	1,000	160
		7/17/63	Williams & Carrington.....	Va. State 6's.....	2,000	160
68	331	7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	4,000	300
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	1,000	300½
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	1,000	300
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	3,000	300
48	335	5/ 2/63	John Jones & Company.....	James River & K. Co.	128	20
		5/ 2/63	John Jones, Esq.....	James River & K. Co.	3	20
..	335	6/16/63	.....	James River & K. Co. (From Dispatch).		22

36	330	4/ 8/63	James River & Kanawha.....	Va. State 6's.....	$5,000	114
38	330	4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	1,400	114
		4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	500	114
		4/ 8/63	C. W. Purcell & Company.....	Va. State 6's.....	500	112
48	330	5/ 2/63	James River & Kanawha.....	Va. State 6's.....	10,000	111¼
		5/ 2/63	James River & Kanawha.....	Va. State 6's.....	3,000	111¼
		5/ 2/63	James River & Kanawha.....	Va. State 6's.....	2,000	111½
58	330	6/16/63	James River & Kanawha.....	Va. State 6's.....	10,000	130½
62	330	7/17/63	Williams & Carrington.....	Va. State 6's.....	1,000	160
		7/17/63	Williams & Carrington.....	Va. State 6's.....	2,000	160
68	331	7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	4,000	300
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	1,000	300½
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	1,000	300
		7/22/63	Gardner, Carlton & Co.....	Va. State 6's.....	3,000	300
48	335	5/ 2/63	John Jones & Company.....	James River & K. Co.	128	20
		5/ 2/63	John Jones, Esq.....	James River & K. Co.	3	20
..	335	6/16/63	.....	James River & K. Co. (From Dispatch).		22
48	337	5/ 2/63	C. W. Purcell & Company.....	Va. Central Rwy.....	10	94
64	331	7/17/63	Geo. R. Wilson.....	Va. State 6's.....	5,000	160
		7/17/63	James River & Kanawha.....	Va. State 6's.....	5,000	160
62	337	7/22/63 (7/22/63[2])	W. M. Sutton & Company.....	Va. Central R. R. Co..	18	116
54	339	5/16/63	C. W. Purcell & Company.....	Richmond & Danville.	10	121
36	341	4/ 8/63	Sam'l I. Harrison.....	Farmers Bank of Va..	40	131

Richmond, Va., November 4, 1914.

I, Richard B. Washington, hereby certify that the items in the above Schedule are supplementary in part to the Schedule already furnished, adding the Folio Pages of Davenport & Company to the pages of the Plaintiff's Exhibit. The above items have been checked by the books of Davenport & Company.

(Sig.) RICHARD B. WASHINGTON.

STATE OF VIRGINIA,
CITY OF RICHMOND, VA. } To wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B. Washington, whose name is signed to the foregoing writing, bearing date November 4th, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 5th day of November, 1914.

(Sig.) WILLIAM R. TRIGG, Notary Public.

I, Arthur G. Potter, hereby certify that I have compared the above record of sales with the books of Davenport & Company, and find that it agrees therewith.

The item noted "From Dispatch" is found in the Richmond Dispatch under date of June 16th, 1863, but has not been found in Davenport & Company's books.

A. G. POTTER.

STATE OF VIRGINIA,
CITY OF RICHMOND, VA. } To wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Arthur G. Potter, whose name is signed to the foregoing writing, bearing date November 7th, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 7th day of November, 1914.

.....Notary Public.

INDEPENDENT SCHEDULE OF SALES from D. & Co's books relating to Plaintiff's Revised Exhibit No. 2 (Continued).

QUOTATIONS AND SALES

DAVENPORT & COMPANY'S SALES

Exhibit R. B. Washington, No. 2. O. Raymond Brown, Notary Public.

D. & Co. Folio No.	Date.	On Account of	No. Shares	Par value	Sold at
		RICHMOND, FREDERICKSBURG & POTOMAC R. R. Co.			
42	4/18/63	Samuel C. Greenhow.....	20	100	105
		VIRGINIA CENTRAL R. R.			
30	3/28/63	Samuel C. Greenhow.....	8	100	101
32	3/28/63	Lancaster & Co.....	50	100	100
60	6/12/63	Mr. Carpenter.....	2	100	98½
62	7/16/63	W. M. Sutton.....	18	100	116
146	1/22/64	Mr. Garrett.....	4	100	146
160	2/12/64	R. H. Maury & Co.....	110	100	160
168	2/26/64	R. H. Maury & Co.....	10	100	148½
176	3/15/64	R. H. Maury & Co.....	10	100	125
186	3/18/64	City Savings Bank.....	10	100	110
212	9/13/64	Wm. H. Pleasants.....	10	100	117½
		JAMES RIVER & KANAWHA COMPANY			
30	3/28/63	Franklin Stearns.....	39	100	21
32	3/28/63	Lancaster & Co.....	300	100	20
36	4/ 7/63	H. Hancock.....	100	100	19
44	4/18/63	Dr. Price.....	10	100	19
48	5/ 1/63	John Jones & Co.....	128	100	20
48	5/ 1/63	John Jones, Esq.....	3	100	20
136	1/ 8/64	E. Carrington.....	15	100	24
		RICHMOND & DANVILLE R. R. COMPANY			
30	3/28/63	Samuel C. Greenhow.....	4	100	131
42	4/18/63	Edmond & Davenport.....	43	100	120
54	5/15/63	C. W. Purcell & Co.....	10	100	121
110	11/ 6/63	Peyton Bayley.....	1	100	207½
156	2/12/64	Geo. S. Palmer.....	15	100	237
174	3/15/64	G. W. Carrington.....	1	100	212½
176	3/15/64	R. H. Maury & Co.....	9	100	212½
176	3/15/64	R. H. Maury & Co.....	31	100	200
222	10/26/64	Merchandise.....	40	100	200
222	10/ 9/64	Merchandise.....	160	100	185
		VIRGINIA & TENNESSEE R. R. COMPANY			
118	11/20/63	Jacob Guggenheimer.....	12	...	145
170	2/26/64	City of Richmond.....	10	...	197
[illegible]		[illegible]	[illegible]		[illegible]

180	3/18/64	City Savings Bank.....	10	100	110
212	9/13/64	Wm. H. Pleasants.....	10	100	117½
		JAMES RIVER & KANAWHA COMPANY			
30	3/28/63	Franklin Stearns.....	39	100	21
32	3/28/63	Lancaster & Co.....	300	100	20
36	4/ 7/63	H. Hancock.....	100	100	19
44	4/18/63	Dr. Price.....	10	100	19
48	5/ 1/63	John Jones & Co.....	128	100	20
48	5/ 1/63	John Jones, Esq.....	3	100	20
136	1/ 8/64	E. Carrington.....	15	100	24
		RICHMOND & DANVILLE R. R. COMPANY			
30	3/28/63	Samuel C. Greenhow.....	4	100	131
42	4/18/63	Edmond & Davenport.....	43	100	120
54	5/15/63	C. W. Purcell & Co.....	10	100	121
110	11/ 6/63	Peyton Bayley.....	1	100	207½
156	2/12/64	Geo. S. Palmer.....	15	100	237
174	3/15/64	G. W. Carrington.....	1	100	212½
176	3/15/64	R. H. Maury & Co.....	9	100	212½
176	3/15/64	R. H. Maury & Co.....	31	100	200
222	10/26/64	Merchandise.....	40	100	200
222	10/ 9/64	Merchandise.....	160	100	185
		VIRGINIA & TENNESSEE R. R. COMPANY			
118	11/20/63	Jacob Guggenheimer.....	12	...	145
170	2/26/64	City of Richmond.....	10	...	197
170	.....	City of Richmond.....	660	...	196
170	.....	City of Richmond.....	30	...	196
170	.....	City of Richmond.....	100	...	196
		RICHMOND & PETERSBURG R. R. COMPANY			
76	9/ 4/63	Mrs. Sarah Munford.....	...	8	156½

Richmond, Va., Nov. 5, 1914.

I, Richard B. Washington, certify that the items contained in the above Schedule are transcripts of sales made by Messrs. Davenport & Company of the City of Richmond, and are taken from their Sales Record Book, not having been known until found on October 30, 1914, as certified to by Coleman Wortham, Esq., a member of the firm of Davenport & Company, dated November 3, 1914.

RICHARD B. WASHINGTON.

STATE OF VIRGINIA
CITY OF RICHMOND } to wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B.Washington, whose name is signed to the foregoing writing, bearing date November 4, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 5th day of November, 1914.

WILLIAM R. TRIGG, Notary Public.

INDEPENDENT SCHEDULE OF SALES from D. & Co's books relating to Plaintiff's Revised Exhibit No. 2 (Continued).

QUOTATIONS AND SALES

DAVENPORT & COMPANY'S SALES

Exhibit R. B. Washington, No. 3. O. Raymond Brown, Notary Public

D. & Co. Folio No.	Date	On Account of	No Shares	Par Value	Rate
		FARMERS BANK			
44	4/18/63	Lewis Webb.....	5	...	122
...	4/18/63	Lewis Webb.....	1	...	122
154	2/12/64	Sam'l I. Harrison.....	5	...	187
158	2/12/64	W. L. Cowardin.....	9	...	189
214	9/13/64	Andrew Johnson.....	6	...	185
218	10/18/64	H. P. Edmond.....	10	...	164
222	10/29/64	J. and G. B. Davenport.....	2	...	165
		EXCHANGE BANK			
42	4/18/63	Sam'l I. Harrison.....	6	...	121
178	3/15/64	City Savings Bank.....	10	...	149
...	3/15/64	City Savings Bank.....	20	...	145
180	3/15/64	City Savings Bank.....	63	...	145
		BANK OF VIRGINIA			
44	4/18/63	Lewis Webb.....	2	...	87
76	9/ 4/63	C. W. Purcell & Company...	8	...	111
138	1/ 8/64	N. Y. Pate.....	4	...	137
174	4/15/64	J. T. Whitfield.....	5	...	126
214	9/13/64	Andrew Johnson.....	20	...	135
222	10/29/64	J. and G. B. Davenport.....	8	...	125

Richmond, Virginia, November 4, 1914.

I, Richard B. Washington, certify that the items contained in the above Schedule are transcripts of sales made by Messrs. Davenport & Company of the City of Richmond, and are taken from their Sales Record Book found in an old vault, the existence of said Sales Record Book not having been known until found on October 30, 1914, as certified to by Coleman Wortham, Esq., a member of the firm of Davenport & Company, dated November 3, 1914.

RICHARD B. WASHINGTON.

STATE OF VIRGINIA
CITY OF RICHMOND } to wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B. Washington, whose name is signed to the foregoing writing, bearing date November 4, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notorial seal the 5th day of November, 1914.

lowing quotations: Superfine, $31 a 32; Extra, $33 a 34; Family, $36 a 37 per bbl. Oats, $6 per bushel and scarce; Wheat—very little doing, no new yet offered; we quote at $5.50 a 6.

GROCERIES:—We quote Brown Sugar at $1.70 a 1.80 per pound; Molasses, $11.50 a 12 per gal.; Coffee, $3.75 a 4 per pound; Rice, 18 a 20c.; Salt, 49c.; Candles, $2.25 a 2.50.

TOBACCO:—Very little doing; the sales show no change in prices. We still quote inferior Lugs, $12.50 a 15; good do., $15 a 25; common Leaf, $30 a 35; good do., $35 a 40; fine Wrappers, $65 a 70; fine Bright Wrappers would bring a much higher price,—say from $175 to 225.

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS.—
Taken from the Records of Davenport & Company, November 2, 1914.

Exhibit R. B. Washington. No. 4.

O. Raymond Brown, Notary Public.

D. & Co. Folio No.	Date.	On Account of	Name of Security.	Amount.	Rate.
36	April 7, 1863	James River & Kanawha.....	Virginia State 6's.....	$5,000	114
38	April 7, 1863	C. W. Purcell & Co.....	Virginia State 6's.....	1,400	114
	April 7, 1863	C. W. Purcell & Co.....	Virginia State 6's.....	500	112
42	Apr. 18, 1863	C. W. Purcell & Co.....	Virginia State 6's.....	1,000	115
44	Apr. 18, 1863	James River & Kanawha.....	Virginia State 6's.....	3,000	112
48	May 1, 1863	James River & Kanawha.....	Virginia State 6's.....	2,000	111½
	May 1, 1863	James River & Kanawha.....	Virginia State 6's.....	10,000	111¼
	May 1, 1863	Wm. Fowle.....	Virginia State 6's.....	3,000	111¼
54	May 15, 1863	James River & Kanawha.....	Virginia State 6's.....	2,000	111¾
	May 15, 1863	Peoples Savings Bank.....	Virginia State 6's.....	6,000	112
	May 15, 1863	James River & Kanawha.....	Virginia State 6's.....	3,000	111¾

58	May 15, 1863	James River & Kanawha	Virginia State 6's	10,000	130½
62	May 15, 1863	Williams & Carrington	Virginia State 6's	2,000	165
	May 15, 1863	Williams & Carrington	Virginia State 6's	3,000	160
64	July 16, 1863	Geo. R. Wilson	Virginia State 6's	3,000	160
	July 16, 1863	James River & Kanawha	Virginia State 6's	5,000	160
66	July 24, 1863	J. G. Read, Admr	Va. Reg. Stock	400	160
	July 24, 1863	Sam'l I. Harrison	Va. Reg. Stock	500	176
68	July 24, 1863	Gardner, Carlton & Co	Virginia State 6's	4,000	300
	July 24, 1863	Gardner, Carlton & Co	Virginia State 6's	1,000	300½
	July 24, 1863	Gardner, Carlton & Co	Virginia State 6's	1,000	300
	July 24, 1863	Gardner, Carlton & Co	Virginia State 6's	3,000	300
70	Aug, 7, 1863	A. U. Stokes	Virginia Reg. Bonds	600	207½
72	Aug. 7, 1863	C. W. Purcell & Co	Virginia Reg. Bonds	1,000	207
76	Sept. 4, 1863	C. W. Purcell & Co	Virginia Reg. Stock	500	195
	Sept. 4, 1863	A. G. Nalle	Va. Coup. old Issue	7,000	420
	Sept. 4, 1863	A. G. Nalle	Va. Coup. Old Issue	3,000	420
	Sept. 4, 1863	A. G. Nalle	Va. Coup. Old Issue	5,000	400

78	Sept. 4, 1863	J. A. Byers	Va. Reg. Stock	1,000	195
	Sept. 4, 1863	Geo. W. Munford	Va. Reg. Stock	6,000	195
	Sept. 18, 1863	Col. T. B. Bigger	Va. 6% Reg. Bonds	1,400	187
	Sept. 18, 1863	Col. T. B. Bigger	Va. 6% Reg. Bonds	400	141½
92	Sept. 18, 1863	C. W. Purcell & Co	Va. 6% Reg. Bonds	800	187
	Sept. 18, 1863	C. W. Purcell & Co	Va. 6% Reg. Bonds	500	186
	Sept. 18, 1863	C. W. Purcell & Co	Va. 6% Reg. Bonds Past Due	2,300	141½
	Sept. 18, 1863	W. O. George	Va. 6% Reg. Bonds	500	185
	Sept. 18, 1863	W. O. George	Va. 6% Reg. Bonds	2,000	183
	Sept. 18, 1863	W. O. George	Va. 6% Reg. Bonds Past Due	1,250	141½
	Sept. 18, 1863	S. Rosenfels	Va. 6% Reg. Bonds	1,000	187
	Sept. 18, 1863	S. Rosenfels	Va. 6% Reg. Bonds	1,000	185½
	Sept. 18, 1863	S. P. Mitchell, Exor	Va. 6% Reg. Bonds Past Due	733	141½
	Sept. 18, 1863	S. P. Mitchell, Exor	Va. 6% Reg. Bonds	1,505	183
	Sept. 18, 1863	Ro. E. Blankenship	Va. 6% Reg. Bonds Past Due	2,300	141½ & Int.
	Sept. 18, 1863	James V. Brooke	Va. 6% Reg. Bonds	5,000	187
	Sept. 18, 1863	L. H. Lyne	Va. Coup. Bonds	2,000	420

96	Sept. 18, 1863	L. R. Spilman	Va. 6% Reg. Bonds	100	183
100	Oct. 9, 1863	L. W. Lyne	Va. State 6% Old Issue	$2,000	406
102	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	3,300	200
	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	11,900	198
	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	6,000	199
	Oct. 9, 1863	G. W. Munford, Tr	Va. Reg. 6% Stock	1,000	198½
	Oct. 9, 1863	James River & Kanawha	Va. Reg. 6% Stock	10,000	200
	Oct. 9, 1863	S. P. Mitchell	Va. Reg. 5% Past Due	700	142½
104	Oct. 9, 1863	Dr. Cabell	Va. Reg. 6% Past Due	1,300	172½
	Oct. 9, 1863	Thos. Branch & Sons	Va. Reg. 6% Past Due	2,000	172½
106	Oct. 9, 1863	A. Carlton	Va. Reg. 6%	5,000	400
	Oct. 9, 1863	A. Carlton	Va. Reg. 6%	1,000	406
108	Nov. 6, 1863	Sheppard & Allen	Va. 6% Coupon	5,000	400
110	Nov. 6, 1863	Dr. Browne	Va. 6% Coupon Past Due	2,000	427½
	Nov. 6, 1863	A. Carlton	Va. 6% Coupon Past Due	2,000	400
	Nov. 6, 1863	James River & Kanawha	Va. Registered	10,000	239
	Nov. 6, 1863	Stephen Dunnington	Va. Registered Past Due	300	227½
	Nov. 6, 1863	Stephen Dunnington	Va. Registered	700	210
	Nov. 6, 1863	G. W. Royster	Va. Registered Past Due	900	210

114	Nov. 20, 1863	H. Hancock	Va. Registered Past Due	700	207
	Nov. 20, 1863	Rev. Saml. Lambeth	Va. Registered 1890	1,200	254
	Nov. 20, 1863	Rev. Saml. Lambeth	Va. Registered 1893	500	253
	Nov. 20, 1863	Rev. Saml. Lambeth	Va. Registered 1876	400	250
116	Nov. 20, 1863	N. Frank	Va. Coupon Bonds	1,000	515
	Nov. 20, 1863	W. H. Fowle	Va. Coupon Bonds	3,000	440
	Nov. 20, 1863	James River & Kanawha Co.	Va. Reg. 6% Long Date	5,000	255
	Nov. 20, 1863	J. Gilmour & Co	Va. Reg. 6% 1894	2,000	255
	Nov. 20, 1863	J. Gilmour & Co	Va. Reg. 6% Past Due	5,000	206
118	Nov. 20, 1863	Williams, Carrington & Barksdale	Va. Reg. 6% 26 Years	700	254
	Nov. 20, 1863	Mrs. Sarah Munford	Va. Reg. 6% 1868	400	255
122	Dec. 11, 1863	R. Cabell	Va. Registered Bonds	2,700	243
	Dec. 11, 1863	R. Cabell	Va. Registered Bonds	1,400	238
	Dec. 11, 1863	R. Cabell	Va. Registered Bonds	2,100	237
	Dec. 11, 1863	Jno. E. White	Va. Reg. 6% Bonds	700	236
124	Dec. 11, 1863	Judge Daniel	Va. Reg. 6% Bonds	1,000	236
	Dec. 11, 1863	Judge Daniel	Va. Reg. 6% Bonds Past Due	500	203
	Dec. 11, 1863	James River & Kanawha	Va. Reg. 6% Bonds	2,000	250

	Dec. 11, 1863	James River & Kanawha	Va. Reg. 6% Bonds	1,000	247
	Dec. 11, 1863	James River & Kanawha	Va. Reg. 6% Bonds	2,000	245
	Dec. 11, 1863	J. Jackson, Jr.	Va. Reg. 6% Bonds	1,500	232
	Dec. 11, 1863	Mrs. Pulliam, Ex	Va. Reg. 6% Bonds	2,000	232
	Dec. 11, 1863	Dr. Meade	Va. Reg. 6% Bonds	3,000	232
126	Dec. 11, 1863	D. F. Williams	Va. Reg. 6% Bonds	1,000	232
	Dec. 11, 1863	D. F. Williams	Va. Reg. 6% Bonds Past Due	1,612.50	204
136	Jan. 6, 1864	Baldwin & Williams	Va. Reg. 6% Bonds 1893–97.	1,300	246
	Jan. 6, 1864	Baldwin & Williams	Va. Reg. 6% Bonds 1890.	4,100	243
	Jan. 6, 1864	Baldwin & Williams	Va. Reg. 6% Bonds	4,200	241
	Jan. 6, 1864	Baldwin & Williams	Va. Reg. 6% Bonds Past Due	1,200	198
138	Jan. 8, 1864	D. G. Watkins	Va. Coupon Bonds	2,500	655
	Jan. 8, 1864	Spotts & Harvey	Va. Registered	1,000	244
	Jan. 8, 1864	J. B. Stegal, Tr	Va. Registered	900	244
	Jan. 8, 1864	J. B. Stegal, Tr	Va. Registered Past Due	200	198
	Jan. 8, 1864	James River & Kanawha	Va. Registered Long Date	15,000	245
140	Jan. 8, 1864	Young and Bros	Virginia State Reg. 6's	1,000	235
150	Jan. 22, 1864	Mr. Inlois	Virginia State Past Due	500	205

152	Jan. 29, 1864	A. Y. Stokes & Co	Virginia State 31 Years	900	255
	Jan. 29, 1864	Davenport & Company	Virginia State Past Due	2,500	205
156	Feb. 12, 1864	Board of Trade	Va. Coup. Bonds	1,000	530
	Feb. 12, 1864	Board of Trade	Va. Coup. Bonds	1,000	525
158	Feb. 12, 1864	Old Dominion Ins. Co	Virginia Reg. 6's	6,300	259
	Feb. 12, 1864	J. A. Poindexter	Virginia Reg. 6's 1887	1,000	257
	Feb. 12, 1864	Isaacs & Company	Virginia Reg. 6's	200	225½
	Feb. 12, 1864	Isaacs & Company	Virginia Reg. 6's	200	247½
162	Feb. 15, 1864	J. A. Poindexter	Virginia Reg. 6's	1,500	260
	Feb. 15, 1864	J. A. Poindexter	Virginia Reg. 6's	2,500	263
164	Feb. 24, 1864	J. A. Meredith	Va. Treasury Notes	10,000	150
168	Feb. 26, 1864	A. Carlton	Va. Reg. 6's	1,000	255
	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's 1894	1,000	255
	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's 1895	2,000	255
	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's Past Due	5,000	194
172	Feb. 26, 1864	J. R. Anderson	Va. Reg. 6's	1,000	200
174	Mar. 15, 1864	J. C. Rutherford	Virginia Treasury Bd	700	200
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	6,000	140

	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	1,000	138
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	1,000	137
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	10,000	135
	Mar. 15, 1864	Bank of Commonwealth	Va. Treasury Notes	1,000	136
176	Mar. 15, 1864	I. Meredith	Va. Registered Bonds	1,000	200
	Mar. 15, 1864	I. Meredith	Va. Registered Bonds	1,000	197½
	Mar. 15, 1864	I. Meredith	Va. Registered Bonds	1,000	195
178	Mar. 15, 1864	John Craeme	Va. 7.3% Treasury Notes	200	135
182	Mar. 18, 1864	Coleman & Wortham	Va. 6% Registered Bonds	1,000	205
	Mar. 18, 1864	J. A. Poindexter	Va. 6% Reg. Bonds Past Due	1,000	150
184	Mar. 18, 1864	T. C. Merddun	Virginia 6% Bonds	4,000	200
188	Mar. 18, 1864	C. W. Purcell & Company	Virginia 6% Bonds	3,500	195
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	1,000	132
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	8,000	130
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	15,000	129
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	4,000	127
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	4,000	126½
	Mar. 18, 1864	C. W. Purcell & Company	Va. Treasury Notes	9,500	126
192	Mar. 25, 1864	W. T. Williams	Va. Treasury Notes	30,000	120

Richmond, Virginia, November 5, 1914.

I, Richard B. Washington, hereby certify that the items herein before given on pages 1, 2, 3, 4, and 5, are transcripts of sales made by Messrs. Davenport and Company of the City of Richmond, and are taken from their Sales Record Book found in an old vault, the said Sales Record Book not having been heretofore known to exist until found on October 30th, 1914, as certified to by Coleman Wortham, Esq., a member of the firm of Davenport and Company, dated November 3, 1914.

RICHARD B. WASHINGTON.

STATE OF VIRGINIA,
CITY OF RICHMOND. To wit:

I, William R. Trigg, a notary public for and in the City of Richmond, State of Virginia, do certify that this day personally appeared before me in my said City, Richard B. Washington, whose name is signed to the foregoing writing, bearing date of November 4, 1914, and made oath that the statements made therein as of his own knowledge are true.

Given under my hand and notarial seal the 5th day of November, 1914.

WILLIAM R. TRIGG, Notary Public.

GEORGE L. CHRISTIAN, being first duly sworn, deposes and says as follows:

Examined by Mr. Anderson

1 Q. Judge Christian, please state your age, residence and occupation?

A. I am in my 74th year; I reside in Richmond, and my occupation is that of a lawyer.

2 Q. Please be kind enough to state what positions, civil, political or judicial you have held during your life in the city of Richmond?

A. I have been President of the City Council; President of the Chamber of Commerce; President of the National Bank of Virginia; President of the Virginia State Insurance Company, and I was at one time Clerk of the Court of Appeals of Virginia.

3 Q. What judicial position have you held?

A. I was Judge of the Hustings Court of the City of Richmond, five years.

4 Q. Are you acquainted with the standing and reputation of the Dispatch newspaper of the city of Richmond?

A. I think so, sir.

5 Q. How long have you known that paper?

A. I have known it ever since I have lived in Richmond, which has been the 1st of July, 1860.

6 Q. Please state what is the character of that paper—whether it is a reputable newspaper, and regarded as reliable?

A. I think it has always been regarded not only as a reputable newspaper, but a very reliable and accurate newspaper.

7 Q. Are you prepared to state what the standing of that newspaper has been in reference to its financial and commercial reports?

A. I never heard them questioned in any way, Major. I believe the financial reports as contained in that paper were generally relied on, as much so as reports in any newspaper.

8 Q. What are you prepared to say in reference to its quotations of the market values, and sales of stocks and bonds, and securities generally, sold in the markets of Richmond?

A. My opinion is that they were recognized as being reliable, and were regarded as authentic, not only by this community, but by the different communities throughout the circulation of the paper.

9 Q. Have you been acquainted, and if so, how long, with the brokerage firms of John A. Lancaster & Son and Lancaster & Co.?

A. I have known them—at least I knew the concern of John A. Lancaster & Son, afterwards Lancaster & Williams—as long as the concerns existed, I mean from the period I came to Richmond to live. I came here as a boy, in 1860.

10 Q. What has been the character, standing and reputation of those firms, in this community?

A. Very high.

11 Q. Will you answer the same question with reference to the firm of Davenport & Co.?

A. I would make the same answer with reference to the firm of Davenport & Co. I knew all the members of both firms, personally.

12 Q. And both were reputable firms?

A. Just as high as any firms in the country, I believe.

Cross-Examination.

By Mr. Holt:

1 XQ. Judge Christian, have you any personal knowledge with respect to the market reports, or market quotations, upon stocks, furnished by Lancaster & Co. or John A. Lancaster & Son, to the Richmond Dispatch?

A. None whatever, sir.

2 XQ. Have you any personal knowledge with respect to the fact, whether or not Davenport & Co. ever furnished to that newspaper market quotations on stocks?

A. No, sir. Personal knowledge, you say?

3 XQ. Yes.

A. No.

4 XQ. Then you have no personal knowledge, as I understand it, Judge, as to whether Davenport & Co. ever furnished any market quotations upon stocks, to the Richmond Dispatch, in the years 1860, '61, '62 or '63?

A. None whatever, sir.

5 XQ. You have no personal knowledge upon the subject whether or not John A. Lancaster & Son or Lancaster & Co. ever furnished any such quotations, in said years, to said newspaper?

A. No, sir.

And further this deponent saith not.

(Signature waived)

JAMES B. PACE, being duly sworn, deposes and says as follows:

Examined by Mr. Anderson:

1 Q. Mr. Pace, will you please state your age, residence and occupation?

A. I am in my 78th year, sir. I am a resident of the city of Richmond, and am at this time Treasurer of the City.

2 Q. What positions, civil or financial, have you held during your life of constant credit and honor?

A. I was President of the Planters National Bank of this city for thirteen years, from 1882; prior to that I was a manufacturer of tobacco.

3 Q. Where did you reside during the War between the States?

A. Danville, Virginia.

4 Q. What was your occupation during the war?

A. I was a manufacturer of woolen cloths.

5 Q. In the city of Danville?

A. Yes, sir.

6 Q. Were you acquainted with the Richmond Dispatch newspaper during the period of the war?

A. Yes, sir.

7 Q. Do you know the character and standing of that paper, in the community in which its circulation extended?

A. The character of it was of the highest order; it was so regarded.

8Q. What was the standing and credit given to its financial columns and reports?

A. It was considered very reliable.

9 Q. Please state whether the reports published in that paper of sales of stocks and bonds and securities generally, and the market quotations of those securities, were accepted by the business public as reliable, during that period?

A. I think so. As far as I know, the public received them as being accurate and reliable.

10Q. Were they, within your knowledge, of that character?

A. I really could not say of my own knowledge. I, of course, noticed the quotations every day or two, as made by the different brokers of the city, which were regarded as reliable.

11Q. Were you acquainted with the standing and reputation and character of the firm of brokers and bankers doing business under the firm names of John A. Lancaster & Son and Lancaster & Co., during that period?

A. Only by reputation.

12 Q. I wish to know what their reputation was.

A. It was considered to be of the very best, and of the highest order.

13 Q. What was the reputation, standing and character of the firm of brokers and stock auctioneers doing business in this city at that time under the firm name of Davenport & Co.?

A. It was considered to be of the highest order.

Cross-Examination.

By Mr. Holt:

1XQ. Mr. Pace, when did you move to the city of Richmond; in what year?

A. I moved here, sir, in December, '65.

2XQ. You were not then a resident of the city of Richmond at any time prior to the year 1865?

A. No, sir; not prior to December, 1865.

3 XQ. Where did you live prior to that time?

A. Danville, Virginia.

4 XQ. How far is Danville from Richmond?

A. One hundred and forty miles southwest.

5 XQ. Did you know the editors or proprietors of the Richmond Dispatch prior to 1865?

A. Not personally.

6 XQ. Did you know any member of the firm of Lancaster & Co. or John A. Lancaster & Son?

A. Not personally.

7 XQ. Did you know any member of the firm of Davenport & Co.?

A. Not personally.

8 XQ. Did you ever have any stock dealings with either of those firms prior to 1865?

A. None whatever.

And further this deponent saith not.

(Signature waived.)

STIPULATION.

It is agreed by and between counsel that the following may be taken and read as the testimony of RICHARD W. MAURY, a gentleman who resides in the city of Richmond, Virginia, who is over 80 years of age, and who was engaged in the brokerage business in the said city, during the period of the Civil War:

Richmond, Va., October 30th, 1914.

The firms of Lancaster & Company, Brokers, and Davenport & Company, Stock Auctioneers, were to my personal knowledge, reputable firms in Richmond during the Civil War, 1861-1865. The members of the above firms were personally known to me. I further beg to state that the Richmond Dispatch was a reputable paper during the above mentioned period, and in its columns were found Stock and Bond quotations which were deemed reliable.

STIPULATION

It is agreed by and between counsel that the following may be taken and read in this cause as the testimony of John B. Purcell:

Richmond, Va., Nov. 4th, 1914.

I, JOHN B. PURCELL, of the City of Richmond, President of the First National Bank of Richmond, hereby certify that I have known the firms of Jno. A. Lancaster & Son and Lancaster & Co. for many years up to the time the succeeding firm went out of business, and during this period was embraced the time occupied by the late Civil War in which I was engaged; that they were dealers in stocks and bonds and other securities in the City of Richmond, and that I further have known and seen advertisements of market reports of stocks and bonds advertised to be sold and as sold in the financial columns of public prints. I have also been acquainted with the firm of Davenport & Co., of Richmond, who have also been dealers in stocks and bonds and are at this present day, and were during the period of the Civil War. The above firms were known to me as reputable concerns of this city.

I recall financial notices and market reports in the Richmond Dispatch, a newspaper in good standing in the city of Richmond, and in the prints of its predecessor known as The Dispatch and published in the city of Richmond, and that such market reports have always been regarded as dependable and relied upon by the business community of this city.

STATE OF VIRGINIA,

CITY OF RICHMOND, to-wit:

I, O. RAYMOND BROWN, a Notary Public in and for the City of Richmond, in the State of Virginia, do hereby certify that the foregoing depositions of John L. Williams, William A. Anderson, William H. Palmer, John P. Branch, Coleman Wortham, Richard B. Washington, George L. Christian and James B. Pace, were duly taken before me at the times and places mentioned in the caption thereof, after the said witnesses had been sworn according to law. And I do further certify that by consent of counsel both for the plaintiff and defendant, the signatures of the witnesses to their respective depositions were waived.

Given under my hand and Notarial Seal, this 21st day November, 1914.

O. RAYMOND BROWN,
Notary Public.

Fee of Notary (and Stenographer as such) $41.60.

New York, December 7th, 1914.

Met pursuant to direction of the Master.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Sandford Robinson, Esq.,
of counsel for plaintiff.

Hon. A. A. Lilly, Attorney General,
Hon. Charles E. Hogg,
Hon. John H. Holt,
of counsel for defendant.

THE MASTER: I understand that the counsel for Virginia claim that there are authorities which show that the book value is not a legal factor to be considered in determining the value of the stock. My recollection of my examination of the authorities is that I have not found any such authority. Now what I would like the counsel for Virginia to do is to give me the name of the case on which they rely for that proposition, and I will have the book sent for, so that we can discuss it, so that we can submit it to the other side, and I can also see it myself. If there is a case or cases that hold that, I would like to see them and look them over before we get through with this hearing. Now, Mr. Robinson, if you will give me, at your convenience, the volume or volumes that contain the cases that you rely on for that proposition, I will send out and get them, and we can look them over, and can have that point cleared up before we adjourn this hearing.

How far along are the counsel on each side with the analysis of the facts bearing upon all the items, that I desired to have them make?

MR. ROBINSON: I will be ready not later than Wednesday.

THE MASTER: How is it with you, Mr. Lilly?

MR. LILLY: Ours is under headway. There are some possible corrections and additions.

MR. HOGG: That is the analysis that you called for in your letter?

THE MASTER: Yes, that is the analysis of the facts. What I want to be able to do with regard to that is, I want to be able to state in my report, and I want to be able to refer to everything that either side contends ought to be considered under any of the items, and the various items, so that I shall not overlook anything that ought to be taken into account. Without that analysis I could not be sure that I would do that.

MR. HOLT: Is it your purpose, Mr. Robinson, to print your analysis?

MR. ROBINSON: No.

THE MASTER: I do not require either side to do that. I would like it better, but I do not require it.

MR. LILLY: If we have the time of course we will print ours.

MR. HOLT: It is more easily handled.

THE MASTER: You both realize the purpose for which I want this analysis. I do not want to go on with a lot of these items, and later on discover that I have omitted something that I ought to have taken into account, when I reach my conclusion, when I come to take up the item. I assume that the counsel are better qualified to call my attention to everything involved than I am. And unless I happened to have an index that stated everything, it is quite possible that I might leave out something that I ought to have had in mind; and that I do not want to do.

MR. HOLT: Our analysis is practically completed. There are a few additions and corrections; and we went over it last night. But I suspect we will print it. That will take a day or two.

THE MASTER: That will be agreeable to me.

MR. HOLT: I do not like to read caligraphy, and handwriting I positively cannot read. I can scarcely read my own.

MR. ROBINSON: Do you want those cases now?

THE MASTER: Yes.

MR. ROBINSON: I gave you a memorandum dated November 12th, 1914, which I sent to the gentlemen from West Virginia. It was an examination of the cases cited by them. I confine myself to that. And certain of those cases decided the point that book value was not evidence of value.

THE MASTER: Now let us have those cases.

MR. ROBINSON: They are Carey vs. Williams; it is cited in West Virginia's brief and in my memorandum.

MR. HOGG: What is the citation of Carey vs. Williams?

THE MASTER: He will give us the page.

MR. ROBINSON: That is cited on page 57 of Professor Hogg's brief.

THE MASTER: What do you say that holds?

MR. ROBINSON: I claim that it is a distinct authority against the principle contended for by the defendant. It holds that entries on the books of a corporation showing the purchase of stock by a person, and payments made by him thereon, are not prima facie evidence that he is a stockholder. The Court says at page 909 of that volume, that

"Corporations are not exempt from the ordinary rules of evidence, and there is no stronger presumption of honesty, or regularity or accuracy as to their books or records than there is in the case of natural persons."

At page 911 the Court said:

"The books and records of corporations, when properly kept, are evidence of the acts and proceedings of the corporate body."

At page 912 the Court said:

"The business entries in the books of a corporation are no more evidence against its members than they are against strangers."

And it cites for that purpose Rudd vs. Robinson in 216 New York, page 113.

THE MASTER: That does not reach the point I have in my mind.

MR. ROBINSON: Now Rudd vs. Robinson, 216 New York, 113, the Court there states this, they say that after a careful consideration of all the cases they can find no principle upon which the account books of a corporation are evidence against a member of the corporation as to the accounts and entries therein. The officers and bookkeepers of a corporation are not agents of the members.

THE MASTER: That does not reach the point.

MR. ROBINSON: What is the point?

MR. HOLT: Upon this point, before you leave it, I know that we have a decision of the Supreme Court of the United States that holds exactly to the contrary.

THE MASTER: I will tell you what I am inclined to think—I do not say that I have reached my conclusion about this—but I am inclined to hold that the reports of corporations in which the state was a stockholder, and where the state required the returns to be made to

it on oath, and where the state published those reports as verities, I am inclined to hold for the purposes of this case that that is equivalent to an admission on the part of Virginia of whatever those reports show are true and in accordance with the facts. Now, that proceeds on an entirely different basis from the discussion of the Court in these two cases. I do not say that I hold that, but my mind is leaning that way. This case is differentiated from nearly every case in that respect. It would be rather unusual if Virginia was to require reports to be made to it on oath under the sanction of a statute enacted by itself, and then publish those reports to the public as accurate information, that they would not be treated later on at least as admissions of hers that the facts therein stated were correctly stated. But that is not the point that I have in my mind.

MR. ROBINSON: Just on that point—what stocks other than the banks had to be reported on under oath?

THE MASTER: All these stocks in the various improvement companies. The case before me shows that there is a statute of Virginia that requires reports of banks to be made on oath, and reports of navigation companies and railroad companies to be made on oath. Those reports were made on oath, and Virginia published them to the world as being accurate reports. Now, that was away back in 1861 and 1863, and as I say my mind is drifting towards the conclusion that that is an admission on the part of Virginia. I do not mean to say that that cannot be explained. That is only a question of the method of proving. I am speaking now of the manner of proving, not the effect of the proof. The impression that I got was this, that Virginia claimed that there were authorities that held that the book value was not a factor to be considered in reaching the actual value. Now, those cases are what

I want my attention called to. The manner of the proof is one thing, and the effect of the proof is quite a different thing. Now, what I want is, if there are any cases that completely hold that book value is not a factor to be considered, I do not mean the determining factor, but is not a legal factor to be considered in reaching the actual value, I want my attention called to those cases, and I will get the cases and look them over and thresh them out here, and see what we all think about them. Do I make myself clear on that, Mr. Robinson?

MR. ROBINSON: On that proposition Judge Holt has cited a line of cases, on page 41 of this brief, under this heading:

"If stocks have no known market value, or if the quotations thereof be not obtainable, or, if obtainable, be not dependable, the actual value of the stock, by all the authorities, may be ascertained by a comparison of the assets and liabilities of the company issuing them, coupled with its activities, as evidenced by dividend declarations, or otherwise."

Now, there is a line of cases, and there does not one of them say that the book value can be considered in determining either the value of the stock or the value of the assets. I have criticised all those cases in this memorandum.

MR. HOLT: Let me reply to your brief, because it is certainly a remarkable document in the light of those cases.

THE MASTER: I have examined all those cases myself, and I have not yet found, either in your brief or in the brief submitted by the other side—and it may be that I have not carefully enough examined the cases to ascertain—I have not yet found a concrete case that holds that book value is not a factor under certain cir-

cumstances to be considered. Now, if there is such a case that holds that—I have examined Judge Holt's cases, and quite a number of them do not sustain his general proposition, but the Judge evidently was not intending to state the substance of all of his cases in his omnibus statement as to what he expected the cases to show, at least I assume that is so——

MR. HOLT: That is true.

THE MASTER: Some of them do not sustain the general statement, and others do tend to sustain it.

MR. ROBINSON: When I was interrupted by Judge Holt, when he said it was a remarkable document, I would be glad to have him point out any inaccuracies in the statement, because I tried to make it accurate.

The case of Cabbel vs. Cabbel, 111 Appellate Division, page 426, is in line with the Rudd vs. Robinson case. There the value of the stock was proved by the testimony of the person having knowledge of the corporation. The Court rejected an inventory of the assets prepared by the corporation, the Court rejected consideration of it. And they cited People vs. The Insurance Company, 107 New York, 541. And then they laid down the rule——

THE MASTER: That is a tax case, People vs. Insurance Company?

MR. ROBINSON: Yes. Then they laid down the rule that the value of shares should be determined by considering the business, property, value of the assets, amount and nature of the liabilities, dividends, market value, or any or all of these. And then the Court in that case went on to say that to get the book value of corporate assets the value of the assets would have to be estimated independently, and they could not be considered at what they were carried on the books.

THE MASTER: That all may be, but that is a question of proof. That case, I understand it, in terms does hold that the book value is an element of value.

MR. HOLT: Absolutely.

THE MASTER: That is the question I am asking. The extract you have just read in almost so many words holds that the book value is an element to be considered in reaching the value. I examined that case with great care, and also the case which precedes it, which were cases as to values under the Tax Statute. Was that the opinion of Judge Finch?

MR. ROBINSON: I do not remember.

THE MASTER: But that does not reach the point.

MR. ROBINSON: When they reject the inventory of corporate assets and take a man's testimony over the inventory prepared by the corporation, and you say that is not an authority of value, you and I cannot argue any more.

THE MASTER: I say that that authority does not pass except affirmatively in favor of the proposition that the book value of the assets, which is the same thing, the assets and property, is to be considered in reaching the value; that the question that you now refer to, or the phase of it you now refer to, is an element of proving what that value is. What I want to get is, if there is any case that holds that the book value of the assets, the property and the business of the company, which is the basis of book value, is or is not a value to be considered in reaching the value. Now, as to whether it would be proved by an inventory, one way or another here, without the testimony of witnesses, is entirely beside that proposition. What I want to get is, what the effect of the proof is if the proof is made. I am not disturbed very much as to how the facts are going to be proved under the peculiar circumstances

of the case. I want to get at, is there a case that holds that the book value, or the assets and property, is not a factor to be considered in reaching the value of the stock.

MR. ROBINSON: Of course I would concede at once that the value of the assets should be considered in reaching the value of the stock. But I say that the book value is no evidence whatever, no competent evidence whatever of the value of those assets, as between Virginia and West Virginia.

MR. ANDERSON: Unless the book value is made upon some sore of approximately accurate value of the assets.

MR. HOLT: Suppose it is made under a statute and upon oath, and accepted by Virginia as being correct, and published to the world as true?

MR. LILLY: And kept in her archives.

MR. HARRISON: That is a mere assumption. No such condition of things exists, as a matter of fact.

THE MASTER: I think it comes pretty nearly being shown by the record. The record shows that there are statutes of Virginia in case of banks and in case of railroads requiring the returns to be made on them.

MR. HARRISON: What returns, the values?

THE MASTER: Yes.

MR. HARRISON: I think your Honor is mistaken.

THE MASTER: The trial balances which have been put in in this case have been made in accordance with the statute requiring them to be made on oath. Virginia was a stockholder in all those concerns, she took those returns herself, made on oath, and published them as true, and they have been circulated as such for public information ever since. The only question

for me is whether, under the circumstances, that is equivalent to an admission of Virginia that they are true; not a conclusive admission, but that is on the question of the manner of proof. It is quite a different thing as to how the thing presents itself, that is as to the method of proof. Now, the question as to how it should be proved does not disturb me so much, as, if it is contended that if proved the book value is not a factor, I would like to see the cases that show it. Do I make myself clear on that?

MR. LILLY: Yes.

THE MASTER: This case that you refer to, Mr. Robinson, does not cover that.

MR. ROBINSON: Mr. Harriman wants to know how this came up.

THE MASTER: Mr. Robinson called my attention to the fact that the book value was not a factor to be considered in determining the value, not a legal factor to be considered; and pending your coming in I was asking him to give me the cases upon which he relied to establish that legal proposition. The cases that you speak of I have examined myself very carefully, and in my judgment they do not either of them show it.

MR. ROBINSON: You do not think the case of Rudd vs. Robinson, in 216 New York, shows that?

THE MASTER: No, of course it does not show that the book value of the assets and the property is to be considered.

MR. ROBINSON: I do not understand that the book value is equivalent to that.

THE MASTER: The book value is nothing under heavens but the assets and the liabilities, that is all, when you come right down to it.

MR. ROBINSON: The book value may be fifty million dollars and the assets may be worth ten thousand dollars.

THE MASTER: That is all the book value is, the contrast between the value of the assets and liabilities.

MR. ROBINSON: It is a contrast between what the books carry the assets and the liabilities at.

THE MASTER: Then it is up to me to say whether the book value is actually proved or not. Virginia is a party to this controversy, she is a stockholder in all these corporations. Under her own statutes these returns are required to be made on oath, and she published them as true, and it is from those returns thus made on oath, and thus published by her, that the facts in this case have been drawn. It would be going a long ways for me to say that that was not equivalent to an admission by Virginia that the facts stated in those returns were true, not a conclusive admission. But in the absence of any other evidence, can it be said that Virginia in 1861, in a corporation in which she is a stockholder, for the public information would require the corporation to make a return on oath of these fundamental facts, showing their trial balances, and then publish them to the world—what did she publish them for?—and then not be affected, after putting them out to the country as facts in connection with those corporations? I cannot conceive any purpose for which Virginia should require those returns to be made, and have them published, in corporations in which she herself was interested, unless it was for the purpose of publishing the facts to the public, so that the public, who are interested, the people of Virginia, who are interested in these investments, who had contributed in taxes to pay these sums that were put into these investments, would know the facts concerning these various properties in which they were interested.

I cannot conceive any reason why that should be done, except to give them the facts relating to these various corporations. That, in a general way, gives you my idea of what the proof is up to date.

MR. ROBINSON: You talk about all these balance sheets. Now, in the case of the banks there were some balance sheets. It appeared on the examination that the title to some of those accounts had been changed from "contingent fund" to "profit and loss," that there were certain bad and doubtful debts that had not been taken into account.

THE MASTER: I have all those in my mind. That is one reason why I want you people on each side to give me a complete analysis from your point of view of these various facts. For instance—I remember all those circumstances, I have gone over that already, and I have my notes already made on those particular cases, and I do not mind saying that when I get around to it I am going to take out of the assets of those corporations those doubtful accounts. Wherever they appear to be doubtful or bad they are going to be cut right out; I can tell you that right now, on both sides, so that you will know how it stands. That is one reason why I want this analysis. If I should go on and take the statement of a bank, and inadvertently omit considerations of that sort, I might reach a wrong conclusion. And that is why I want both sides in this case to call my attention in detail to anything that they wish to have considered in connection with those.

MR. ROBINSON: This is the fact that I want to call your attention to. Outside of those banks, and the Richmond, Fredericksburg & Potomac Railroad Company, where there was a balance sheet, there it not another balance sheet in this case. All the other book values are merely par value as of 1856——

MR. ANDERSON: Either that or cost.

MR. ROBINSON: Plus alleged paper profits. The existence of the profits, or the substance of it, is not at all attempted to be shown.

THE MASTER: That does not affect the principle at all. That detail I want you to give me when you give me your analysis. And if you will all give me your analyses, and give them carefully, you may be sure that everything you say will be considered by me in reaching my conclusion. I am discussing now the question of principle. There may be but one balance sheet to which this question applies. I do not see why Virginia is not to be treated here like any other party to a litigation. If she makes a statement and an admission—and as far as that is concerned there is very much more reason why a statement she makes as verity should be held as verity, as far as she is concerned—now whether that applies to one of the items or all of the items, I will take your various analyses, and I will see how far it does apply. I have no objection to your discussing it, but I am not discussing now the detail of the case as to how far this principle would affect my conclusion. In the first place I want to get two principles settled, the manner in which these facts should be proved with referenced to book value, and if proved whether they are a legal factor to be taken into account in reaching a conclusion as to the value. I do not mean that they may be the determining factor, because there are various factors involved in reaching a conclusion as to value. But if there are any cases that hold that the book value, or in other words the assets and liabilities, as shown by the balance sheet of the corporation, if properly established, are not to be considered as an element in reaching value, I want to get those cases so that we can look them over. But my at-

tention, up to date, has not been called to a specific case that shows that.

MR. ROBINSON: Do you mean established by the fact of the entry or established by extrinsic proof?

THE MASTER: I mean book value as a fact, throwing out of account altogether the manner in which it is established.

MR. ROBINSON: What is book value? Is book value the value as shown by the figures themselves, or is it a value which may appear on those figures but which may be established by extrinsic proof as to what it is?

THE MASTER: That is the question of the method of proving book value. Does it exist? If it exists, that depends upon the proof. Suppose the proof shows that it does exist. If it exists, what weight is to be given to it in this case? Do I make that clear?

MR. ROBINSON: Not to me.

MR. HOLT: The point in Mr. Robinson's mind seems to be this, that the book may display a column of assets and a corresponding column of liabilities, but that is no proof of the value of those assets. But you have already answered that. And there is another answer to it, too. The very statute under which these reports were made to the Commonwealth of Virginia required these banks and canal and other internal improvement companies to report the condition of the companies, and they do that by reporting assets and liabilities. Of course that means the true assets and the true liabilities; otherwise you would not reach the result showing the condition of the company under the statute. That is the way the statute reads.

THE MASTER: It is for me to say whether this is proved. But suppose I hold it proved, under the circumstances of this case, and for the purposes of this

case, then the question is, what effect is to be given to the proof. There are two propositions. Suppose I hold that the book value is established, now then am I to give any weight to it in reaching the conclusion as to the value of these assets?

MR. HOLT: Yes, because the book value is the accurate value if the books have been correctly kept.

THE MASTER: I understood Virginia to claim that the book value, if established, was not a proper factor to be taken into account in fixing the value of the stock. If there are authorities that hold that, I would like to have my attention called to them before I get through with this hearing, so that I can look them over, and so that the other side may comment on them.

MR. HOLT: I understood your position and the distinction you made between the method of proof and the conclusiveness of the proof.

THE MASTER: All I can say is that the cases to which my attention have been called up to date do not show this.

MR. HOLT: May I make inquiry as to what has been printed of that document No. 17? There was some correspondence between yourself and counsel on both sides about what of that document was to be printed. Has the whole thing been printed? Does it embrace everything relating to the James River and Kanawha Company?

THE MASTER: Judge Holt's inquiry is whether the printed copy headed James River and Kanawha Company embraces everything relating to the James River and Kanawha Company. My understanding is that it does, and if it does not I will have whatever there is of the original document that has been left out, added.

MR. HOLT: The reason for my inquiry, if your Honor will pardon me, is this——

THE MASTER: My instructions were to have everything in document No. 17 that related to the James River and Kanawha Company printed. From page 1187 to page 1194 is to be treated as though it had not yet been introduced, as I did not intend to have that printed.

MR. HOLT: The point of my inquiry, your Honor, was this. We lodged with you the other day, in response to some exhibits upon this subject tendered by Mr. Potter, three or four new exhibits prepared by Mr. Hillman, and the one of them marked Supplemental Exhibit No. 4 contains what purport to be a lot of extracts and excerpts from this document No. 17, and we do not find them in the printed pamphlet to which you have just referred. It may be that they have been overlooked in the printing, or it may be that I have overlooked them in reading the pamphlet

THE MASTER: The pamphlet ought to contain everything in that document No. 17 that relates to the James River and Kanawha Company. Whether it does or not I do not know.

MR. HOLT: The supplemental exhibit, as I said before, that we filed, is largely made up of extracts from document No. 17; but I do not find those extracts in this printed pamphlet, therefore everything relating to that is not included. This will illustrate. (Reading)

"Page 225, Document 17, September 30th, 1860. Resolutions of Investigating Committee of Stockholders. 'That they congratulate the stockkholders on the improved and apparently improving condition of the Company in every department of its affairs.' "

And then this:

"Page 232, Document 17, September 30th, 1860. Extract from president's report. 'And in the month of July, the water was withdrawn from some of the levels for the usual systematic repairs.'"

And then again:

"On page 692 of the same volume the president of the James River and Kanawha Company values the property at $10,000,000, which was in the year 1859."

And you will find that those extracts from the report, all the way through, of the president, show that the repairs had all been kept up, as we understand it, out of the revenues earned. So there was no depreciation.

THE MASTER: The first thing to be ascertained is whether or not this document as furnished to me is a correct transcript of that document. If it is not correct we will have it made correct. I read through Mr. Hillman's exhibit when I received it, and I started to try and pick out from the report which I have here, this page of the report, before I got the print, the references made by Mr. Hillman. Of course I found out right away that Mr. Hillman's references to pages were undoubtedly to the pages of the printed document on file in Virginia. I assumed that it was probably all in here somewhere, and that he could find it. If it is not all in here, as far as the James River and Kanawha Company is concerned the hearing stops right here until it is completed. I have had so much inconvenience in getting at this original data that I do not propose to make any move until I have what I believe to be the original report, or a transcript of it, so that I may know what I am looking at. I rather assume that Mr. Hillman could probably find his references in this, but if they are not here and this document is not com-

plete, that is the end of the investigation this morning on the James River and Kanawha Company.

MR. HILLMAN: I am looking for those.

THE MASTER: You run it down while we are discussing something else. It may be that you will find it. If you do not find it, then we have not yet succeeded in getting the exact facts with relation to the James River and Kanawha Company. And I shall insist on those facts being in here. While Mr. Hillman is doing that, I call the attetion of the counsel for Virginia—I do not think Mr. Harrison has seen this, and Mr. Robinson has just hurriedly looked it through—West Virginia presents here now an extract from a public document which they find on the files in West Virginia, purporting to have been published by Virginia, which gives details that have not heretofore been available in connection with this Jeffersonville Branch. You look that through carefully and see what you have to say about it.

MR. LILLY: I can wire and get the book here tomorrow.

THE MASTER: We might just as well take our time now and clean this all up. My suggestion still holds, that if either of you finds that there is something that ought to be put into this case, that ought to go in, you will have a chance to put it in; and also if I find anything that I think ought to go in it will go in.

MR. HOGG: You do not want any unconsidered factors in this case.

THE MASTER: Not if I know it. Of course this exhibit tends to throw some light on this Jeffersonville business. I shall hold that the burden is on West Virginia to show the value of these various stocks on these respective dates, that is so far as the burden amounts to anything one way or the other on the ques-

tion of proof. Now, on this particular matter the bearing would be this; Mr. Dixcy, who was the accountant for West Virginia in the former hearing, filed an exhibit in which he stated that West Virginia was chargeable with the full amount of that stock. And I held its value to be $427,250. I think the value that you claim now is less than that. That was based on everything I had before me at that time.

MR. HOLT: Had not Mr. Dixcy heard of the Graziers' Bank?

THE MASTER: He did not say anything about it, and, of course, nobody else said anything about it. What Mr. Dixcy had heard about and what he knew, I do not know. The practical situation about that is this; West Virginia stands here in this hearing with its expert in the former hearing conceding that the full amount of the Northwestern Bank stock was chargeable to West Virginia. Now under those circumstances the burden is on West Virginia to satisfy me that that is not proper. If West Virginia says the facts are the other way, it is up to her to show me some facts that will justify me in holding the other way. It is up to West Virginia to satisfy me by some legally competent testimony that I should reach that conclusion.

MR. HOLT: We recognized the difficulty from the beginning. We put in the statutes showing the lopping off of the Branch at Jeffersonville, and the subsequent establishing of the Grazier Bank. The question was how much of that should be subtracted from the charge against West Virginia on account of the Northwestern Bank. But at the time we were at Richmond we did not have any evidence on the subject. And all we could do was to establish the fact that that Branch had been lopped off, and the Grazier Bank established.

THE MASTER: That statute shows that there was $25,000 in gold still on deposit in Wheeling that was alleged to be the property of the Grazier Bank, if I remember right. This exhibit here tends to show that the stock of the Jeffersonville Branch was about $164,000.

MR. HOLT: There are two or three matters in the record now, in what I call the new record, showing that Virginia in the sixties, after the establishment of the Grazier Bank, continued to receive dividends on about $164,000.

THE MASTER: $146,000 I think it was.

MR. LILLY: $146,000.

THE MASTER: Let us get that right now. About all there is in this record that tends to establish the size of the Jeffersonville Branch—

MR. ROBINSON: It is on page 74.

THE MASTER: Page 74 of the exhibits?

MR. ROBINSON: Yes, sir.

THE MASTER: There was a dividend in 1862 of $14,000, April 1st; July 22nd, 1862, $640, ten per cent. What does that $640, ten per cent, July 22nd, 1862, represent? I cannot guess about this too much you know. Is there anything about it in the record? Here is $640, ten per cent., July 22nd, 1862. Here is July 22nd, 1862, $7,320, five per cent.; and January 20th, 1863, $7,320, five per cent. Will it be assumed that that is perhaps a yearly dividend of $14,640, at ten per cent.?

MR. HOGG: That is five per cent. semi-annually undoubtedly.

MR. HOLT: Suppose you look at page 80 also, on the same subject. There are some more dividends on Graziers' Bank stock there.

MR. ROBINSON: Judge Holt, where is the exhibit showing the incorporation of the Graziers' Bank?

THE MASTER: July 28th, 1863, $6,820, five per cent., dividend on 1,346 shares.

MR. HOLT: That shows that Virginia had at that date 1,346 shares in the Graziers' Bank; at least she was receiving dividends on that amount.

THE MASTER: It shows that she was receiving dividends. Now, the only other fact in this record that tends to establish the size of this Jeffersonville Branch is the fact that a certificate for $50,000, par value of the Graziers' Bank, was found on the files of Virginia.

MR. LILLY: That, your Honor, was a school fund.

THE MASTER: But that is all that appears. If there is anything further, that is if there is anything to connect these things—of course I do not know what they may say about this here, of course if this is a correct extract from an original record it may have some tendency to clear up the situation.

MR. LILLY: I will wire for the book, your Honor.

THE MASTER: It is almost incredible to my mind that there is not somebody in existence in Jeffersonville, or some books or records—if this does not prove to be what we want—if there are not some books or records or some living witnesses around Jeffersonville or Tazewell who have some knowledge about the size and condition of that bank. Of course, it may be that there are not. I do not suppose either side has made any effort to ascertain that fact from anybody living in Tazewell. Is that true?

MR. ANDERSON: We have not.

THE MASTER: Neither has the other side.

MR. HOLT: I think you will find the statute establishlishing the Graziers' Bank is March 13, 1862, page 984 of the record.

THE MASTER: Here I have on one hand dividends on a certain basis, and I have on the other hand a certificate of stock on an entirely different basis; and an entire absence of any evidence as to what may be obtained in Tazewell or Jeffersonville. Of course, I am not speaking now of the effect of what you produce here this morning.

MR. HOLT: I know that we left Richmond feeling distinctly that we had only, so far as our testimony then given was concerned, introduced an Act showing the cutting off of the Jeffersonville Branch, and another Act establishing it into the Graziers' Bank, but that so far we had discovered no evidence showing what deduction should be made from the Northwestern on that account, except as to the dividends.

MR. LILLY: There is a law in Virginia after a certain time not allowing her to invest in bank stocks, and the presumption is that it would be the old stock.

THE MASTER: Let me ask Mr. Robinson and Mr. Harrison—they present here this morning an extract from a document, and they say they can produce the document here. Do you want them to produce the document here? Of course that is a significant report.

MR. ROBINSON: We would like to see it.

MR. LILLY: I will telegraph for it at once.

THE MASTER: I suppose that perhaps is as far as we can go with this Jeffersonville Branch, right now.

MR. HOLT: This is a report by the cashier of the Jeffersonville Branch to Governor Letcher, in consequence of the fact that he could not report to the parent bank at Wheeling.

THE MASTER: That was the Confederate Government?

MR. HOLT: Letcher was the Confederate Governor of Virginia. His report is dated October 17, 1861. "I again enclose you quarterly statement of the condition of this office, being excluded from communicating with parent bank."

MR. LILLY: The idea I am suggesting, there is an Act prohibiting Virginia from investing, in the future, in any internal improvement stocks or bank stocks, and therefore this must have been the stock that was converted into the Graziers' Bank stock.

THE MASTER: I think the case shows this, that whatever appears to be invested by Virginia in the Grazier Bank, so far as I can see on this record, it is to be inferred it was her portion of the Northwestern Bank. The question now is what it was.

MR. HOLT: Mr. Lilly's idea was that that would show, by this statute, that she had not purchased any more stock in the Grazier Bank after it had been clipped from the Northwestern.

MR. LILLY: Our idea was that in the discussion of the matter we might refer to these various statutes.

THE MASTER: This is not a very large item. It certainly was not cleaned up at the previous hearing, except that West Virginia assumed the responsibility of the whole business, and there was not any occasion for going into it. When I come to go into it I find these things confronting me. Wherever my report may vary from my previous report, I must give some reason why I vary it, at least I shall try to, or else I won't vary it.

MR. HOLT: I do not know, I may misunderstand, but as I understood it you had invited us here, Mr. Littlefield, for the purpose of seeing where we were on the

following matters. First, the James River and Kanawha Company, which would cover the exhibit since the last hearing, filed by Mr. Potter, and the reply exhibits filed by Mr. Hillman. Secondly, the exhibit filed by Mr. Potter, relating to the Blue Ridge Railroad Company, filed since the last hearing—

THE MASTER: That, I think, is not printed.

MR. HOLT: —and the reply exhibit filed by Mr. Hillman. Third, the Northwestern Bank; and fourth, the depositions taken at Richmond, under the suggestion of the Master, relative to the subject of market quotations. Those are the four matters.

THE MASTER: Yes.

MR. HOLT: And I suppose that none of the exhibits presented by Mr. Potter, and that none of the exhibits just now mentioned by Mr. Hillman, have been embraced or printed in the record.

THE MASTER: Some of Mr. Potter's exhibits have been printed, but they are not in the case, and until supported by Mr. Potter, or unless supported by Mr. Potter, they will be taken out of the case. I did not intend to have them printed. The Blue Ridge exhibit is not printed at all, I think, and I did not intend to have the others printed, because I was going to treat them all on the same basis. Those that have been printed may be treated as not in the case, and won't be in unless supported by Mr. Potter's statement. That I think covers your ground, does it not, Judge?

MR. HOLT: Yes, sir. Now, in what way can we make further progress this morning?

THE MASTER: Until Mr. Hillman makes such examination of this printed case, so as to be able to know whether that is a complete extract, why, I do not see that we can make much progress on the James River and Kanawha Company. We have tentatively cleaned

up this matter of the Tazewell Branch, and that now awaits the bringing on of this original report, which can be brought on here. If the original report, when it is brought on, does not show sufficient detail I shall either want the counsel on one side or the other to make an investigation at Tazewell, or I will have it made myself; because, in the absence of being able to get satisfactory information, I do not think the case ought to be closed until somebody ascertains what is or is not in existence, by sending somebody to Jeffersonville or Tazewell to find out what facts may be ascertained there. Of course, if Virginia wants to concede on the record that what West Virginia claims should be allowed for the Tazewell Branch should be allowed, that will take care of it. But if they contest it, why I want that information. Of course they would not want to say about that, I suppose, right off the bat. All these items, as far as I am concerned, if the parties agree on them, if you set up a claim as to value and the other side admits it, I shall not spend any more time on it. But if you disagree, and there are facts which in my judgment ought to be available, and which have not been produced, why I shall wait until I get them.

Now, the Blue Ridge matter, of course Mr. Potter is not here.

MR. LILLY: Why not adjourn and let our accountants get to work, and be ready by the time Mr. Potter gets here?

THE MASTER: Suppose we suspend until two o'clock this afternoon, or ten o'clock tomorrow morning?

MR. LILLY: Will it do any good to meet at two o'clock this afternoon if Mr. Potter is the first witness?

MR. ROBINSON: We might take up the question of the depositions.

THE MASTER: The deposition matter is entirely a matter of comment and argument.

MR. HOLT: With one exception, and perhaps it is only an inquiry of General Anderson or Mr. Harrison—while in Richmond, as I recall, they instructed someone to copy from a book of Davenport & Company a list of sales of stock. I do not find that list of sales attached to or embodied in the stenographic report of the testimony anywhere.

MR. HARRISON: Won't you refresh your memory by looking at the evidence?

THE MASTER: Mr. Leeds calls my attention to the fact that there is a document on file in Richmond that shows, referring now to an element that we had in the discussion this morning, in which I stated that where it appeared that there were debts that were doubtful or uncertain I should cut them out—he says that that shows that most of those debts were collected. And he wants know what can be done about getting these reports. Of course that question was opened in Richmond, and Mr. Harrison disclosed on his cross-examination that infirmity about that trial balance. I did not state what I was going to do about it. Of course everybody must know that I would have to reach some conclusion about it. And that matter of course should have been produced by West Virginia at that time. But I am not going to hold them down to that. If there is evidence tending to negative the effect of the evidence disclosed by Mr. Harrison on cross-examination, under the circumstances of this case, with all the parties involved, why I am going to let the other side produce it. While, strictly speaking, I think it was their business to have produced it in Richmond, it was all disclosed there to them and they ought to have anticipated the effect that evidence of that kind would have on my

mind—whatever should go in here, even though I do not think you have exercised the diligence you ought to have exercised—because I think the right kind of diligence would have produced that evidence in Richmond—it will be introduced, I will hear it. I am going to have an end of this, but, of course, I can understand that there are a good many details connected with it, and it may be that it will be a little rank to hold that counsel for West Virginia were not exercising due diligence if they did not dig this up. But if it is a fact, and they want to produce it, they may produce it. Now, the question is how are we going to get at that. Mr. Leeds wants to know. That is a document on file in Richmond.

MR. LEEDS: We ought to have the one about the James River and Kanawha Company.

MR. ANDERSON: Receipts from whom and by whom?

MR. LEEDS: There are trial balances of the bank which show that they lost this year fifty thousand dollars bad or doubtful debts, the next year the balance will show twenty thousand dollars bad or doubtful debts, showing that there have been thirty thousand dollars collected.

MR. HARRISON: It does not show that they were collected.

THE MASTER: If there is anything that West Virginia thinks is important on that line, I think it is incumbent upon me to let it in. I do not say now what weight I shall give to it, but I think they are entitled to the benefit of any fact that it is proper to show.

MR. ANDERSON: I am very sorry that Mr. Potter is not here, because I feel very sure that any stock ownership by Virginia in the Northwestern branch bank at Jeffersonville which afterwards went into the Grazier Bank, is shown by records in Richmond. It has

been overlooked in some way. I do not think there is an item of ownership of stock that is not shown.

THE MASTER: I have called Mr. Potter in for the purpose of having Mr. Potter make some effort to get this information. All that Mr. Potter knows about that is this, and I think the record shows it, that there were found in Virginia at one time a certificate for fifty thousand dollars of the par value of the stock in the Grazier Bank. I think there was another certificate found, perhaps for the same amount.

MR. ANDERSON: The stocks owned by Virginia were either held by the literary fund or by the board of public works, and their records show all the facts.

THE MASTER: I am telling you now all that Mr. Potter knows about it, unless he has discovered something since he talked with me. Because I put it right up to Mr. Potter to give me what information he had showing how much stock Virginia held in this Jeffersonville branch, and all that Mr. Potter knew about it is what appears in this record. And, at my request, Mr. Potter wrote to the postmaster down at Tazewell to see if he could get some information from him, and he had not heard from him up to the last time I saw him. That is the whole case on the details as to the branch in Tazewell.

MR. LILLY: Do you suppose, your Honor, on the new phase, you could phone the Auditor at Virginia and get him to send us Volume 14 and Volume 17?

THE MASTER: I would be very glad to telegraph him. I suppose he would do that quicker for you, Mr. Harrison, than he would for me, wouldn't he?

MR. LILLY: It is the original volume of documents 14 and 17.

MR. ROBINSON: Document 14 is of the banks and document 17 is the railroad and canal companies, and shows the James River and Kanawha Company. Why not ask Mr. Page to send those up with a messenger at the Master's expense?

MR. HARRISON: If you want to try and get those books up here, why not telephone Mr. Page and ask him to send them up?

THE MASTER: Let us be sure and get the right book, and let us be sure that we do not want anything else, because I am fully as anxious, and more anxious than anybody else, to get this matter finished.

MR. HARRISON: Is there anything else that you want?

THE MASTER: In looking over Mr. Hillman's exhibit there were some references made to some original documents and extracts made from original documents. From now on whenever anybody makes any extracts from original documents I want the whole document; if it is a table, I want the whole table; if it is an abstract from statistics, I want all the statistics, because there is almost always a controversy between the parties as to what the facts may be. If either party relies on any original document I want the whole of that document to which they make reference, so if there is any controversy I can make up my mind as to whose contention is correct. We have had more or less confusion as to what this shows or that shows. If there is any controversy about it I want to know myself what it shows. If there is any dispute between the parties, then I can decide it in short order. If there is anything that Mr. Hillman refers to in his exhibit that would be covered by my suggestion, let us have it here. Then if there is a question about it I will hear both of

you, and I will take the original and make up my mind about it very quickly.

MR. HOLT: If Mr. Page comes, upon your invitation, Mr. Littlefield, he might bring both document 14, which is referred to by Mr. Leeds, and document 17, which covers the James River and Kanawha Company; and then with the original here we can see whether this document covers those extracts.

MR. HARRISON: I think he will send them up to you.

THE MASTER: I will call him on the phone. The question is, is there anything more that we want.

MR. HILLMAN: We have an entry here from the James River and Kanawha Company reports on file in the Chesapeake and Ohio offices. We have no method of getting those that I know of.

THE MASTER: Mr. Harrison is attorney for the Chesapeake and Ohio, and he can get those.

MR. HARRISON: What would you ask for? What shall I send for?

MR. HILLMAN: Volume 5—I will make a memorandum of it for you.

THE MASTER: Mr. Page can either bring these himself or send them up by a messenger that he has confidence in, and let it stay here until we get through with the document.

MR. HOLT: If Mr. Harrison at the same time telegraphed to the Chesapeake and Ohio and had those documents sent to Mr. Page, they might be brought at the same time.

MR. ROBINSON: Can't you dispose of the depositions this morning?

MR. HOLT: When we get these things straightened out from those books, then is it your idea to print the last exhibits?

THE MASTER: Yes, whatever takes place here goes in as additional record.

MR. HOLT: You want to transmit these as part of your report?

THE MASTER: Yes.

Adjourned to meet at the Bar Association, December 8th, 1914, at 10 A. M.

New York, December 8th, 1914.

Met pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Sandford Robinson, Esq.,
of counsel for plaintiff.

Hon A. A. Lilly, Attorney General,
Hon. Charles E. Hogg,
Hon. John H. Holt,
of counsel for defendant.

After considerable discussion as to the production of original documents and some efforts to agree on a stipulation, adjourned to December 9th, 1914, at 10 A. M.

New York, December 9th, 1914.

Met pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,
Hon. Randolph Harrison,
Sandford Robinson, Esq.,
of counsel for plaintiff.

Hon A. A. Lilly, Attorney General,
Hon. Charles E. Hogg,
Hon. John H. Holt,
of counsel for defendant.

ARTHUR G. POTTER, recalled for further examination on behalf of the plaintiff, testified as follows:

Direct Examination:

By Mr. Robinson:

Q. Mr. Potter, have you made a schedule containing extracts from Document No. 17, James River and Kanawha Company, being part of the report of the Board of Public Works?

A. Yes, sir.

Q. Will you please state what that extract is?

MR. LILLY: What page is that?

MR. ANDERSON: Page 107 of the printed document.

Q. Please state what that extract is and how it was made up.

THE MASTER: In the first place state on what pages of the print it is to be found.

THE WITNESS: It appears at pages 1187, 1188, 1189 and 1190.

MR. LILLY: You might call this Volume 3, I suppose, of the last print.

THE MASTER: Yes, Volume 3.

THE WITNESS: This statement is a summarizing of the report of the James River and Kanawha Company of receipts and disbursements from the organization of the Company to the 30th of September, 1860, made as a statement in condensed form of the same information contained in this same volume, printed at pages 1148-A, 1149, 1150 and 1151. The figures are exactly the same in both instances, with the exception that the outstanding warrants at the end of the period are deducted from my cash balance, instead of being footed in on the other side. The totals are exactly the same, with that exception.

By the Master:

Q. You say page 1148-A?

A. Page 1148-A, this large statement, Mr. Littlefield, that is the beginning.

MR. HOLT: It is marked 1148-A at the bottom of the page.

THE WITNESS: Yes, and it goes over to the next following two or three pages.

MR. ROBINSON: Pages 1149 and 1150 and 1151 are a continuation of an account which starts on this wide sheet here.

THE MASTER: The big wide sheet I notice is marked at the bottom 1148-A.

By Mr. Robinson:

Q. Now, Mr. Potter, in computing the disbursements for the James River and Kanawha Company I notice you have omitted——

THE MASTER: Take first whatever you have to say about the receipts. I want this to go in its order, so that when I come to look at it it will all ravel right out in the order in which it comes. Then follow that up with your succeeding matter, unless that disarranges unnecessarily your mehod. Otherwise, when I come to look at the record I will have to keep shifting back and forth.

Q. Will you please explain how the total of receipts shown on the bottom of page 1187, of $5,434,443.35 was arrived at?

A. It was arrived at by adding the first three items on page 1148-A, namely, $793,345.55, $4,230,891.92 and $57,710.60, and one item which appears on page 1149, namely, $2,182.88, from interest on State stock. I combined that with other items of interest and premiums. It shows a total income of $5,434,443.35. In other words, I have merely excluded all of the capital receipts in this statement appearing at page 1148-A, and stated in that total the income from operations and interest, etc.

Q. If I understand you then, your statement of receipts includes all entries that are receipts of income, and excludes all entries that are receipts from capital account?

A. Yes, sir. I would like to amend my previous answer. I want to add that I included in the total of $5,434,443.35 the items of tolls appearing in the last total on page 1148-A, and income from the Richmond Dock, and income from the five locks, tide water connection, T. W. C. it is here.

By the Master:

Q. Does that include everything except bills payable?

A. No, sir; bills payable and insurance on New Canton Bridge.

Q. With the exception of those two items, it includes everything in that item?

A. Yes, sir. My total on page 1187 of $5,434,443.35 includes all the items at the left of page 1148-A, with the exception of bills payable $152,055.12, and insurance on New Canton Bridge, $10,000.

By Mr. Robinson:

Q. Mr. Potter, will you explain how you arrived at your statement of disbursements?

MR. HOLT: Where are they, Mr. Robinson?

Q. Contained at pages 1189 and 1190 of Volume No. 3.

A. The items on page 1189 are taken from page 1148-A, all of the items on the right hand side, except the following: dividends of the James River and Kanawha Company, $11,599.59, certificates of the First Auditor, $469,188.30; and certificates of the Second Auditor, $202,821.30; and it includes three items on page 1151, namely: loss by General Hamilton's Agency, $63,820,45; notes from delinquent subscribers and others, for arrearages, $4,241.84, and securities in agents' hands collecting stock arrearages, $381.73. The total of these items is $6,737,399.10, as shown on page 1189.

Q. Mr. Potter, referring to the entry or referring to the item, dividends of the James River and Kanawha Company, $11,599.59, please state when that dividend was paid.

MR. ANDERSON: What page is that?

MR. ROBINSON: That is page 1148-A.

THE MASTER: If there is something in the record that shows that, just state where it is, so I can check it.

THE WITNESS: It is Exhibit G-1, page 11 of that exhibit——

THE MASTER: It is Exhibit G-1 of the original record?

THE WITNESS: Of the original record, page 11 of that exhibit, paragraph 7 of the decree——

MR. HARRISON: Pages 820-L and 820-N of the original record.

THE WITNESS: This is on page 820-L of the original record; it shows that there was paid in 1836 $10,092 as dividend—that exhibit shows this to be dividends received by the Commonwealth; the difference between the $10,092 and the $11,000 shown in this report.

By the Master:

Q. $11,599.59?

A. Yes, sir; that is doubtless the amount paid to individual stockholders other than the State of Virginia.

By Mr. Harrison:

Q. The dividend is also shown on page 193 of the Master's report as paid in 1836?

A. Yes, sir.

By Mr. Robinson:

Q. Why did you not include among your disbursements the certificates to the First Auditor for $469,188.30, and the certificates to the Second Auditor of $202,821.30?

MR. HOLT: What page is that, Mr. Robinson?

MR. ROBINSON: On page 1148-A.

A. Because I could not determine exactly what those payments were made for. I believe that they were made for interest—they were interest payments, but I could not prove it.

By Mr. Anderson:

Q. Interest payments paid by whom?

A. Paid by the James River and Kanawha Company to the First and Second Auditors for money loaned by the State to the James River and Kanawha Company.

By Mr. Robinson:

Q. They are entries on the liabilities' side of the account, are they not, Mr. Potter?

MR. ANDERSON: Will you ask him the date of those?

A. They are entries on the disbursements' side, Mr. Robinson, which indicates that they were payments.

Q. Payments?

A. Yes, sir. And they are under the heading, additional charges on revenue. So I think that it is perfectly reasonable to put that construction on them, that they are interest payments.

Q. However, you have not included them in your schedule?

A. No, sir; I have not.

Q. Will you please state the effect of not including them in your schedule?

A. The apparent deficit would be $672,009.60 more than I have stated it on page 1190. And in my certificate I said that the deficit was not less than $1,302,955.75, because under the construction that I have just indicated it would be nearly $2,000,000, not quite $2,000,000.

Q. Will you explain why you excluded any other entries upon the disbursements' side of this account?

A. The disbursements found on page 1150 are evidently all construction disbursements, amounting to $7,811,875.46, and $1,670,609 on page 1151—that is, pages 1150 and 1151.

Q. Do I understand that you have included all disbursements chargeable to income and excluded disbursements chargeable to capital, with the exception of the three entries that I have specifically called your attention to?

A. Yes, sir.

By the Master:

Q. What do you mean by disbursements chargeable to income?

A. The statement shows under the heading of disbursements, first, for repairs and maintenance; then it gives four items, then there is another group of three items, the first one says new canal, from Richmond to Buchanan, $1,811,260.93; inasmuch as that came under the general heading for repairs and maintenance I take it that is what it means. It is followed by two items, damage to canal by fresh—I suppose that means freshet—of July, 1842, $67,542.23, and damage to canal by fresh of November, 1847, $21,424.48.

MR. ROBINSON: I think you have misunderstood the Master's question.

THE MASTER: My question was, what do you mean by disbursements chargeable to income? Do you mean by that that the disbursements are chargeable to operating expenses?

MR. ROBINSON: There were operating expenses and capital charges.

THE MASTER: I do not see the significance of disbursements chargeable to income.

Q. Do you mean by that disbursements properly chargeable to up-keep?

A. Yes, sir.

Q. As distinguished from disbursements for capital account?

A. Yes, sir.

THE MASTER: I see it now. I wanted to get the significance of the disbursements chargeable to income.

MR. ROBINSON: We offer in evidence Mr. Potter's schedule as printed at pages 1187 to 1190 inclusive.

MR. HOLT: That does not then embrace, as I understand your offer, page 1148-A?

MR. ROBINSON: The Master has put that in.

THE MASTER: The document, James River and Kanawha Company, was put into the case under my instructions. That was an original document, and I put it in. And I understand that both sides propose to make a deduction from that.

MR. ROBINSON: That will be Plaintiff's Exhibit No. 24.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 24, December 9th, 1914, C. B.

By Mr. Robinson:

Q. Mr. Potter, referring to Plaintiff's Exhibit No. 24, just introduced, and which appears at pages 1187 to 1190 inclusive of the printed record No. 3, will you please state the difference between the receipts from income and the charges to operation, as shown upon that exhibit?

A. In dollars and cents, do you mean?

Q. Yes.

A. $1,302,955.75.

THE MASTER: Your question is not quite broad enough to cover that answer, unless by charges to operation you mean to include maintenance, up-keep, expenses and interest. Of course, operation may be one thing, and a fixed charge of interest quite another thing. Do you see?

MR. ROBINSON: Yes, sir. Just change the question that way.

THE MASTER: I want you all to keep the distinction in mind between operating expenses and fixed charges.

Q. I will repeat my question. Mr. Potter, referring to Plaintiff's Exhibit No. 24, just introduced in evidence, and appearing at pages 1187 to 1190 inclusive of the printed record No. 3, will you please state the difference between the receipts from income and the charges for maintenance, up-keep, expenses and interest, as shown upon that exhibit?

A. $1,302,955.75.

Q. The disbursements exceeded the receipts by that amount?

A. The disbursements from income.

Q. The disbursements we have just stated?

A. Yes, sir.

THE MASTER: What is that, the disbursements from income?

Q. That is the disbursements for maintenance, up-keep, expenses and interest?

A. Yes, sir.

Q. That exceeded the income by that amount?

A. Yes, sir.

By the Master:

Q. And if the items of the certificates to the First Auditor and Second Auditor were items of expense, or expenditure for interest, it would add to the deficit how much?

A. $672,009.60.

THE MASTER: I want to inquire right here—and unless there is objection, as I go along on all of these items, as a matter occurs to me that I want to know about, I will make the inquiry at the time.

MR. ROBINSON: Of course that is proper.

THE MASTER: I would like to know why it is that the books of Virginia do not show what those two items of payment were for, and if any effort was made to ascertain what they were for from the books.

THE WITNESS: I went through the report of 1860, the auditor's report, and I could not see any amounts or descriptions which tallied with them. I think it may be there, but in smaller items, in groups of items which are designated under different heads; but I did not see anything that would tally, would seem to tally with those two amounts.

Q. You did not find any groups which compared with these two groups?

A. No, sir. You see, Mr. Littlefield, this extends over a period of twenty-five years.

Q. I understand this is supposed to have covered a period of twenty-five years, but you did not go over that period of twenty-five years of the account?

A. No, sir; I did not.

Q. For the purpose of ascertaining what might have represented these?

A. No, sir; and furthermore, I found no entries on the books as certificates of the auditors. It seems that they had a certain kind of paper called certificates of auditors, but I did not find any.

Q. Did you make any examination of the books of Virginia for the purpose of ascertaining how much the James River and Kanawha Company had paid to the State of Virginia for interest during this period?

A. No, sir; I did not make such inquiry. But I can say this much about that, that the Board of Public Works had an account which they called revenue, and that revenue ac-

count contained the revenue from all the companies. It was not credited to an account called interest from the James River and Kanawha Company, it was credited to an account called revenue, with quarterly or half-yearly credits through the journal. It would mean analyzing the journal to find out where the interest came from.

Q. That is the credits of interest were in lump sums?

A. Yes, sir.

Q. Without indicating the sources from which the interest came?

A. In the final resting place in the ledger, but in the journal it indicated exactly where the money came from; but the items were legion.

Q. In other words, you did not ascertain the lump sum items for the purpose of ascertaining where the items came from, for the purpose of developing the source of those?

A. No, sir.

Q. And you did not find anything on the books of Virginia that gave any explanation of certificates?

A. No, sir.

Q. Or indicated that certificates were made an element of the account?

A. No, sir.

THE MASTER: That is all.

MR. HARRISON: They are included, however, here on the original document, as disbursements.

THE MASTER: The difficulty is, so far Mr. Potter is not able to state whether they are interest charges or not. They are certificates of some sort for some purpose. Whether they are interest or not, he is not able to say, and therefore he does not include them in the deficit. Is that it?

THE WITNESS: Yes, sir; that is it.

By Mr. Robinson:

Q. Mr. Potter, do the receipts from capital, stated at page 1188 of your exhibit, exceed the charges to construction, plus the principal of the old James River annuity, plus the dividends of the James River and Kanawha Company, plus the certificates to the State auditors heretofore mentioned, by this same sum of $1,302,955.75?

A. It does, with the exception that there is a balance of cash of $103,000.

Q. Then I will repeat my question. Do the receipts from capital stated at page 1188 of your exhibit, exceed the charges to construction, plue the principal of the old James River annuity, plus the dividends of the James River and Kanawha Company, plus the certificates to the State auditors heretofore mentioned, plus $103,035.33, cash on hand, by this same sum of $1,302,955.75?

A. Yes, sir.

Q. Stated at page 1190 of your exhibit?

A. Yes, sir; $1,302,955.75.

MR. ROBINSON: Whenever I refer to expenses of operation I always intend to include the maintenance, up-keep, expenses and interest, because I look upon them all as expenses of operation.

MR. HOLT: Do you mean fixed charges or a part of expenses of operation?

THE MASTER: Strictly speaking, I suppose they are not, but if you intend to include them, we understand in what sense you use the language.

MR. ROBINSON: Usually a company does not operate very long after they stop paying their fixed charges.

MR. HOLT: That is true, but interest on bonds is hardly an operating expense.

MR. ROBINSON: We are just quarreling with words; our ideas are the same.

THE MASTER: We had better use the same words in the same sense all the way through, and then I won't have any confusion.

Q. Mr. Potter, have you prepared another schedule, showing the receipts and disbursements of the James River and Kanawha Company for four years, October 1st, 1859, to September 30th, 1863, taken from the printed volumes of annual reports of the Company in the possession of the Chesapeake & Ohio Railroad Company at Richmond, Virginia, printed at pages 1191 to 1194 inclusive, of Volume 3 of this record?

A. Yes, sir.

Q. Will you please explain how——

By the Master:

Q. The document you refer to is also printed in the record as the James River and Kanawha Company, is it not?

A. Yes, sir.

THE MASTER: The document you refer to upon which this statement is predicated is printed in the third volume of the record, is it not?

MR. ROBINSON: No, those are all in the books of the Chesapeake & Ohio.

MR. HARRISON: He has prepared this statement from that report.

THE MASTER: Is not this the original document I ordered printed?

THE WITNESS: So far as 1860 is concerned it is, but so far as 1861, 1862 and 1863 are concerned there is nothing printed in this report.

THE MASTER: As to September 30th, 1860, this statement you have prepared is predicated upon the document already printed in this case?

THE WITNESS: Yes, sir; at page 1103 of Volume 3.

Q. The statement of receipts and disbursements contained in Document No. 17, and printed in this record at pages 1103 to 1105 inclusive, ending with the entry to balance, September 30th, 1860, $106,258.02, is the source from which you compiled this schedule, so far as the entries under September 30th, 1860, are concerned?

A. Yes, sir.

Q. Will you please state how you arrived at these items of revenue?

THE MASTER: Suppose we dispose right now of 1861, 1862 and 1863. Those are predicated upon some original documents that are not here. Now, have they any such significance that you want to use them? If they have not I will strike them out; and if they have, those books ought to have been sent for along with the other books.

THE WITNESS: There is no point in printing this at all unless you are going to have the comparison.

Q. What volumes are they in? We have coming now Volumes 2 and 5 of the Chesapeake & Ohio. Are they not among those papers?

A. I judge they must be in Volume 5.

MR. ROBINSON: Do you know, Mr. Hillman?

MR. HILLMAN: In Volume 5 it has the years prior to 1860. I do not know whether it has these three years in or not; I could not say.

THE WITNESS: They were yearly volumes, 1861, 1862 and 1863; they were separate books.

Q. The statement of receipts and disbursements contained in Document No. 17, and printed in this record at pages 1103 to 1105 inclusive, ending with the entry to balance, September 30th, 1860, $106,258.02, is the source from which you compiled this schedule, so far as the entries under September 30th, 1860, are concerned. Will you please state how you arrived at those items of revenue?

A. I arrived at the items of revenue stated on page 1191, for the year ending September 30th, 1860, merely by taking the same items that appeared in the original document, which is printed at page 1103, and the figures are identical.

Q. How did you arrive at the items of disbursements shown on page 1193, the total of $219,441.57?

A. That figure is identical with the total in the original document, on page 1104.

Q. How did you arrive at the total shown at the bottom of the page, amounting to $406,943.23?

A. By adding the items appearing on page 1104, under the caption of interest, $186,126.89, which is the total of four items, and the State tax of $1,374.77.

By Mr. Harrison:

Q. By adding those to what, Mr. Potter?

A. By adding those to the previous figure, I arrive at the total of $406,943.23.

By Mr. Robinson:

Q. Does this show that the disbursements for maintenance, up-keep, expenses and interest exceeded the receipts for revenue for that year?

A. Assuming that all of these disbursements were made for up-keep and maintenance, all of the items contained in the total of $219,441.57, then the total that I have shown covers maintenance, up-keep, interest and expenses of maintaining the Company for that year.

By Mr. Harrison:

Q. Do they exceed the income from revenue?

A. Yes, sir.

By Mr. Robinson:

Q. By how much?

A. $98,048.90.

MR. HOLT: Now that is for the year ending when?

MR. ROBINSON: September 30th, 1860.

Q. Are there any items for disbursements shown on page 1193 that you can say were disbursements for construction?

A. Not positively; no, sir. I merely copied the statement as it appears on page 1104, without making any inquiry as to whether any of those items were for actual capital account. My belief at the time was that they did not, because the captions of the account do not seem to indicate that.

By the Master:

Q. That is, whether they were construction proper, as distinguished from repairs or up-keep?

A. Yes, sir.

Q. Or renewals?

A. Yes, sir.

Q. That is, whether they would be additions to the plant or whether they were simply moneys expended in keeping the plant in condition?

A. There was nothing to show on the face of this statement exactly what it was.

Q. Is there anything in Document No. 17 that throws any light on that subject?

MR. ROBINSON: I was just going to ask him to state off the record——

MR. HOLT: What do you mean by stating off the record?

MR. ROBINSON: I do not want it on the record. The point I want to have you see here, as we go along, that even if all of that item were construction items, there would still be a deficit in that year, because Mr. Potter says the deficit is $98,048.90, as shown by his figures.

By Mr. Robinson:

Q. Now, Mr. Potter, if you will please turn to page 1194 of your Exhibit. And will you read the amount of interest on the State debt to Virginia, and the amount of annuity, of the old James River annuity, that was due and unpaid on September 30th, 1860?

A. The interest due the State was $1,301,500.15.

THE MASTER: You say that was due and unpaid?

MR. ROBINSON: Yes, sir.

MR. HOLT: I think that was paid off by taking preferred stock.

THE MASTFR: But at that date in 1860 this Act was passed, which authorized the converting of the debt into preferred stock. What they are undertaking to do now is to bring the account up to that date, as I understand it.

MR. HARRISON: That is right.

THE WITNESS: The annuity was $118,500, as indicated on unpaid balances on the principal of $300,000.

Q. How was this unpaid annuity and past due and unpaid interest discharged by the James River and Kanawha Company?

A. By issuing to the State of Virginia capital stock.

Q. Will you please state the amount, and where that is shown in your exhibit?

A. This statement which we are discussing covers the receipts of cash from revenue and other sources, and takes up as a receipt the new capital stock issued, $7,400,000.

By Mr. Harrison:

Q. Just give the page please.

A. On page 1192.

By Mr. Robinson:

Q. Please state the pages of Document 17, as printed in the record, where the entries for the capital stock and for the past due interest and annuity are shown.

A. That is on page 1103.

Q. What does that show?

A. For new capital stock, $7,400,000—no, it says from new capital stock, $7,400,000; from State release, $360,214.44; from State loan, for Kanawha River, $40,000.

Q. Where are the statements of past due and unpaid interest and the over-due annuity, entered?

A. On page 1105, at the top of the page.

Q. Will you read what they are?

A. State of Virginia: Debt, $5,790,214.29; Interest, $1,301,500.15; Annuity, $118,500; Principal of annuity, $350,000.

By the Master:

Q. How do I understand, right here, that if this item of interest unpaid of $1,301,500.15, as you say, and annuity, $118,500, if those two items had been paid it would have increased this deficit of $1,302,955.75 by that amount, is that the way you understand the account?

A. You are talking about two different statements now, Mr. Littlefield.

Q. I want to get them straight in my mind.

A. This is the statement of 1860, wherein they take up on the debit side and credit side the items that offset each other.

Q. For that year, do you mean?

A. Because the transactions occurred in that year.

Q. Does that show there was a balance of interest still due and unpaid to the State, of $1,301,500.15?

A. Yes, sir.

Q. Is that balance included in the $1,302,955.75, the general statement covering the whole period of twenty-five years, or should it be added to it?

A. No, the summary statement is a complete summary statement, including these offsetting items.

Q. Then the fact that $1,301,500.15 of interest was not paid does not in any way affect the deficit that you have reported from the statement covering the period of twenty-five years?

A. No, sir.

By Mr. Robinson:

Q. Mr. Potter, I call your attention to an extract from a report to the stockholders, presented by General Taliaferro, printed at the top of page 4 of Document No. 17, as contained in Volume 3, and reading as follows, "While the great measure of converting the debt into stock, granted by the Legislature last winter, has relieved the Company from a load of oppressive embarrassment, and contributed to produce a most happy effect upon the public mind in reference to the value of the improvement," and ask you to state to what that refers.

A. It refers to the conversion of the debt owed by the James River and Kanawha Company to the State of Virginia, as shown on page 1105.

Q. What was the amount of that debt?

A. $5,790,214.29.

THE MASTER: As shown on page 1105, and as provided for by Act so and so. Just put that Act in there, so I can have it all together.

MR. HARRISON: I think it was March 23d, 1860.

THE MASTER: Is not that already printed here?

MR. HARRISON: It is all in the old record.

THE MASTER: Let us have a reference to it.

MR. HARRISON: I had the date right, March 23rd, 1860. It is page 108 of the appendix to the old record.

MR. ROBINSON: It is re-printed in the new record at page 67 of the exhibits, Volume 2 of the new record.

Q. What was the amount of that debt?

A. $5,790,214.29.

Q. What does that represent?

A. It is entered under the heading of debt to the State of Virginia.

By the Master:

Q. What page is that?

A. Page 1105 of Volume No. 3.

By Mr. Harrison:

Q. Give the balance of the items.

A. Interest, $1,301,500.15; annuity, $118,500; principal of annuity, $350,000; total, $7,560,214.44.

By Mr. Robinson:

Q. What did the State accept from the Company in exchange for the discharge of these obligations?

A. The capital stock of the James River and Kanawha Company.

THE MASTER: And when? What does the account show?

MR. ROBINSON: It shows that it happened in that year, that is all.

THE MASTER: Is there anything to show the date when?

MR. ROBINSON: No, there is not.

MR. ANDERSON: Before the 30th of September, 1860. A part of the claim was realized by the State, $360,000.

By the Master:

Q. There is no doubt about the identity of the two items?

A. No, sir; none whatever.

By Mr. Robinson:

Q. Now, Mr. Potter, referring to the items on your exhibit at page 1191, under date of September 30th, 1861, please state whether all the items under that column, on pages 1191, 1192, 1193 and 1194, are exact copies of the whole of an account similar to the one stated for the year 1860 on pages 1103 to 1105 of Volume 3.

A. Yes, sir; they are.

THE MASTER: Before you go into that, what is the significance of the years 1861, 1862 and 1863?

MR. ROBINSON: They show that there was the same deficit for each of those years.

MR. ANDERSON: There was a deficit—not the same deficit.

MR. ROBINSON: Showing a deficit for each of those years.

THE MASTER: Let me see if I get this. Your contention is that these reports for 1861, 1862 and 1863 show a deficit of maintenance, up-keep, expenses, repairs and interest, notwithstanding the conversion of the debt of Virginia into capital stock?

MR. HARRISON: Yes, sir, down to the year 1863.

MR. HOLT: That is beginning with September 30th, 1860, and running to September 30th, 1863; that is the way I understand it.

THE MASTER: Now then, I get that. Now of course if the other side requires it, and if I think as it develops that I want to see it, I shall have to see these original reports for 1861, 1862 and 1863. They ought to have been here.

MR. HILLMAN: It is possible that they may be included in Volumes 2 and 5.

THE MASTER: From now on I shall want to be in a position where I can see either the original records or what I can look upon as the complete extracts.

MR. HARRISON: These statements were furnished to other side.

THE MASTER: It may not be enough for me, to satisfy the other side, I have got to be satisfied. We will see how that works along. But, subject to that suggestion, of course we will go right along. I want to treat both sides exactly alike on this proposition, and no matter what may be developed, if anything turns up where I want to see the original I shall have to have it.

MR. HOLT: As I understand, Volumes 2 and 5 will disclose this.

THE MASTER: I hope they will.

MR. ANDERSON: I would like to ask Mr. Potter whether he examined any volume of higher number than 5.

THE WITNESS: I cannot remember; I cannot answer that.

(Testimony read by stenographer.)

Q. Do they show that the disbursements for maintenance, up-keep, expenses and interest exceed the receipts from revenue, and if so, by what amount?

A. They show, for the year ended September 30th, 1861, there was a deficit——

THE MASTER: Put that in this way, please——give the total receipts and the total disbursements, and then give the difference, so that I will know just exactly what you take it from.

THE WITNESS: For the fiscal year ended September 30th, 1861, the revenue receipts are stated at $160,547.63.

THE MASTER: That is at page 1191?

THE WITNESS: Yes, sir; that is, at page 1191. The disbursements for maintenance, up-keep, expenses and interest are $230,357.17.

THE MASTER: That is, at page 1193, is it not?

THE WITNESS: Yes, sir; that is at page 1193. Leaving an indicated deficit of $69,809.54. There is an item in there of $5.70, down at the bottom of the page, that might possibly be thrown on to the next page. It was so small I did not pay any attention to it. I do not know what it is.

Q. Please state the same facts with reference to the year ended September 30th, 1862.

A. The revenue receipts for that year are shown to be $143,190.84.

THE MASTER: That is at page 1191?

THE WITNESS: Yes, sir; that is at page 1191. And the disbursements for maintenance, up-keep, expenses and interest are shown to be $189,800.70.

THE MASTER: That is at page 1193?

THE WITNESS: Yes, sir; that is at page 1193. Leaving an indicated deficit of $46,609.86.

Q. Please state the same facts with reference to the year ending September 30th, 1863.

A. The receipts from revenue are $302,443.96; that is on page 1191; the disbursements for maintenance, up-keep, expenses and interest are $431,480.21; that is on page 1193; showing an indicated deficit of $129,036.25.

MR. ROBINSON: I ask to have this schedule, headed James River and Kanawha Company, printed at pages 1191 to 1194 inclusive of Volume 3, marked in evidence as plaintiff's Exhibit No. 25, and filed in this case.

MR. HOLT: That is the one, the original source of which we have not before us.

THE MASTER: Subject to the suggestions before made, it is admitted.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 25, December 9th, 1914, C. B.

THE MASTER: In regard to the Blue Ridge Road, I want to make a general inquiry and see whether anybody is able to state the facts from the record. I got the impression that the Blue Ridge Railway was substantially a tunnel through the mountain. I want to get on the record the fact about that. How long is the road, and how much of it is tunnel?

MR. ANDERSON: There are several tunnels.

MR. LILLY: The road is sixteen miles long.

MR. ANDERSON: No, no; ten miles long.

THE MASTER: See if there is anything in the record. I would like to have this stated here before we begin on this subject. I want to see just what that Blue Ridge tunnel is.

MR. LILLY: I can show your Honor where it is on the map.

THE MASTER: I would like to get approximately the facts about that. I have searched the record a good deal for that, and I did not find anything that satisfied me about it. In the first place, does the Blue Ridge Railroad tunnel——

MR. HOLT: It begins on the eastern side, as I understand it, of the Blue Ridge, and runs up the Blue Ridge, and tunnels through two or three spurs of it before it finally reaches the main tunnel through the Blue Ridge Mountains.

THE MASTER: Now, what is the total length of the Blue Ridge Road, approximately?

MR. ANDERSON: I understood it to be ten miles of railroad; that may be exclusive of the tunnel.

MR. HOLT: Does that embrace or exclude the tunnel?

MR. ANDERSON: I do not know whether it embraces or excludes the tunnels.

MR. HOLT: It is nearly all tunnel, is it not?

MR. ANDERSON: No, the main tunnel is seven-eighths of a mile—the Hoosac Tunnel was the only tunnel in America that was longer when that was built, as I understand it. And then there were three or four small tunnels, from a few hundred feet to a quarter of a mile in length.

THE MASTER: Is it agreed practically that the whole road is ten miles in length?

MR. LILLY: I think it is sixteen miles.

THE MASTER: I would like to have the physical character of the road right in the record here, and then if I have occasion to discuss it I will have it before me.

MR. ANDERSON: The Blue Ridge Railroad cost nearly $1,700,000.

MR. HOLT: It was very expensive on account of the tunnels.

THE MASTER: The impression I got was that it was such an expensive piece of railroad that the State had to build it, no railroad company wanted to build it. Am I right about that?

MR. ANDERSON: I know the State built it and owned it exclusively.

THE MASTER: Is there anything here to show when it was built? Look at the origial record in the table of Acts appropriating money, that may tell when it was started. That is in the back part of the book, General Anderson.

MR. ROBINSON: Why not leave it until Mr. Harrison finds out just exactly what that was?

THE MASTER: I would like to have it right in a nut shell at this point, while I am at it. According to this table of Acts appropriating money, the Blue Ridge seems to have been started in 1849.

MR. ANDERSON: It was not built for several years after that. They had a temporary road over the Gap for several years while they were building it.

MR. HOGG: It was incorporated as a railroad on the 5th day of March, 1849.

THE MASTER: Well, put that in. That is near enough.

MR. ANDERSON: It was probably built by about 1853 or 1854.

MR. HOLT: I think one of our exhibits here gives the expenditures up to a certain time.

MR. LILLY: I do not think it was completed until about 1859. I am not speaking for the record, but that is about the time they commenced getting toll for it.

MR. HOLT: If you will turn to page 27 of Volume 2, new record, you will find that the cost of construction up to January 1st, 1861, was $1,604,000. Then you will find that there was invested in it after that date $90,000 more.

THE MASTER: Yes, but that does not give us when it was started.

MR. HOLT: But that tells you when it was completed.

THE MASTER: I have been all over this to find out something about that, and I have read that statement over and over again. All these statements, practically, when they give acts up to a certain date—I do not know as one of them tells when the construction was begun. I have dug up more or less of it by looking into the index of the appropriation Acts.

MR. LILLY: There are reports here that show the number of miles, and then the next year it would show a different number, and what part was under construction.

THE MASTER: We won't keep everybody waiting here while we are looking that up, but I would like to have that put right in there. What I want is the approximate length and the approximate amount of the road that is tunneled, so as to get some sort of an idea about it.

MR. ANDERSON: Did your Honor have a volume of the Board of Public Works report sent to you?

THE MASTER: Document 14 is here.

MR. ROBINSON: Why don't we go along, and put it in afterwards?

THE MASTER: That is all right, put it in afterwards. We won't stop for it now.

Q. Mr. Potter, I call your attention to a paper marked Blue Ridge Railroad Company, basis of valuation April 1st, 1870, by joint commission, Virginia and West Virginia, and ask you to state what that paper is.

A. That paper is a copy of an original pen written document found on file in the office of the State Corporation Commissions in Richmond, Virginia, in a box of original documents labeled Blue Ridge Railroad. This box cotains copies of contracts and other miscellaneous papers.

Q. Relating to the Blue Ridge Railroad Company?

A. Yes, sir.

Q. Can you state whether the copy is a correct copy?

A. I cannot state positively. I think it is a correct copy, because it is signed by both the cashier——

Q. Can you state whether your copy is a correct copy of the paper on file?

A. Yes, sir, it is a correct copy.

MR. ROBINSON: I ask to have that paper marked in evidence.

MR. HOLT: I do not understand that to be a copy from which he took it, that was the original paper, was it not?

THE WITNESS: I understood Mr. Robinson to refer to the original document. I want to withdraw that, and simply say that I know this is a correct copy of the original document, from which it was copied.

MR. HOLT: I understood what you wanted to get at, but then you were discussing the one in the box down there as if it were a copy.

MR. ROBINSON: I am much obliged to you, Judge.

By the Master:

Q. Let me get the significance of your answer. Does your answer imply that all of the typewritten material upon this exhibit is an accurate extract from the original on file, beginning, "Value on the 1st day of April, 1870, ascertained by the rule established by award of the Commissioners of the Covington and Ohio Railroad, dated May 25th, 1867"?

A. Yes, sir.

Q. That statement appeared in the original document?

A. Yes, sir.

Q. So that this document here is a literal transcript?

A. Yes, sir; that is a literal transcript of the original document down to the final footing of $122,187.77. Then it is signed and certified correct by the cashier of the Chesapeake & Ohio Railroad and by the secretary of the Board of Public Works; but in both cases their signatures appear, which I did not copy at the time. This copy was taken for another purpose, and then it was used for this purpose afterwards. Then the endorsement on the back of that report, the stars there indicate that something has been omitted, I believe. Are there some stars in that endorsement, Mr. Littlefield?

THE MASTER: Yes.

THE WITNESS: That is not a complete endorsement. In other words, there was something omitted here.

MR. ANDERSON: I find the length of the Blue Ridge Road given here, at page 127, as 16.8104 miles, being the report of the Virginia Central Railroad Company for 1860, page 129 of Document 17.

By Mr. Robinson:

Q. Is the endorsement as stated in the paper a correct copy of the endorsement on the original document?

A. It is not a complete copy. So far as it goes it is verbatim.

Q. Are the signatures the same?

A. They are.

Q. All the signatures appearing upon the original document are contained in your copy?

A. Yes, sir.

Q. And no signatures are omitted, on the endorsement?

A. No, sir.

MR. ROBINSON: I ask to have that paper marked in evidence as Plaintiff's Exhibit No. 26.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 26, December 9th, 1914, C. B.

THE MASTER: Plaintiff's Exhibit No. 26 does not contain any comments of Mr. Potter?

MR. HARRISON: None whatever. It is simply a transcript.

PLAINTIFF'S EXHIBIT No. 26.

No. 2

BLUE RIDGE RAILROAD COMPANY.

Value on the 1st day of April, 1870, ascertained by the rule established by award of the commissioners of the Covington and Ohio Railroad, dated May 25th, 1867.

1.—Amount due to the State.

Cost of Blue Ridge Railroad	$1,694,870.85
Amount actually paid in tolls, etc.	191,458.32
Amount remaining unpaid	$1,503,412.53

Amounts of tolls, etc., accrued but not paid—

Payable at the end of each year:

For the year

1865	$ 8,976.16
1866	19,655.33
1867	25,471.36
1868	31,780.99
1869	32,061.40
To April 1, 1870	4,240.53
Whole amount to April 1, 1870	$122,187.77
Balance payable in tolls, etc., yet to accrue	$1,381,224.76

No. 2.—Annuity.

The largest amount of tolls, etc., accrued in any year, exclusive of 1861-1862-1863 and 1864 was for the year 1869	$	32,061.40
Sum to be discharged by the Annuity		$1,381,224.76
Number of years required		Forty-three

No. 3.—Value of Annuity.

Amount of Annuity above	$	32,061.40
Value of each Annual dollar to run forty-three years according to tolls in 2 Rob. Pract. page 384		15.3061
Present value of Annuity of $32,061.40 running forty-three years		490,734.99

4.—Summary

The claim of the State is:	
For amount of tolls, etc., accrued and unpaid	122,167.77
For present value of tolls, etc., to accrue	490,734.99
Amount of Principal Money	$612,922.76

5.—Interest Account.

If interest is charged upon the tolls, etc., as they annually accrued the account will be:

Due January 1, 1866	$	8,978.16
Interest to April 1st, 1870	$2,289.43	
Due January 1st, 1867		19,655.33
Interest to April 1st, 1870	3,832.78	
Due January 1st, 1868		25,471.36
Interest to April 1st, 1870	3,438.63	

Due January 1st, 1869		31,780.99
Interest to April 1st, 1870	2,383.57	
Due January 1st, 1870		32,061.40
Interest to April 1st, 1870	480.91	
Due April 1st, 1870		4,240.53
	$12,425.32	$122,187.77

Office of the Chesapeake & Ohio Railroad Company,

Richmond, Virginia. April 1, 1870.

Certified correct by the Cashier, Chesapeake& Ohio Railroad.
" " " " Secretary, Board of Public Works.

Endorsement

"Said Commissioners do hereby ascertain said value as "of said 1st day of April, A. D. 1870, to be $625,348.08 "This valuation being made by them in conformity with "the rule established by their decision of 25th of May, "1867, then made at the request of the Virginia Central "Railroad Company." * * *

(Signed) Thos. S. Flournoy Joel McPherson
R. H. Maury T. D. Ramsdell
Wm. J. Robinson Jno. S. Cunningham
Commissioners of Virginia Commissioners of West Virginia

MR. HARRISON: I want to call attention to the Acts, Mr. Littlefield. The document or paper just filed, Plaintiff's Exhibit No. 26, being the value, ascertained by the Commissioners of Virginia and West Virginia, of the Blue Ridge Railroad, as of April, 1870, was made under and in pursuance of the concurrent Acts of the State of Virginia and the State of West Virginia, which are published and contained in the appen-

dix to the original record, beginning at page 35 and extending to page 49, inclusive. I think these Acts have been refiled.

MR. LILLY: I think they have been reprinted.

MR. HARRISON: Perhaps I had better give a list of them, for convenience. The Acts referred to are as follows:

An Act of the State of Virginia to incorporate the Covington and Ohio Railroad Company, passed February 26th, 1866, found at page 35 of the appendix to the original record.

An Act of the State of West Virginia to incorporate the Covington and Ohio Railroad Company, passed March 1st, 1866, and found at page 37 of the original record.

An Act of the State of West Virginia to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio River, passed February 26th, 1867, found at page 40 of the original record.

An act of the State of Virginia to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio River, passed March 1st, 1867, found at page 43 of the original record.

An Act of the State of West Virginia confirming and amending the charter of the Chesapeake and Ohio Railroad Company, passed January 26th, 1870, found at page 46 of the original record. This Act includes the contract with the Commissioners for the completion of the Covington and Ohio Railroad.

MR. HOLT: Do you recall, Mr. Harrison, whether or not any of these Acts detailed the power of these Commissioners?

MR. HARRISON: It gave them carte blanche power.

MR. HOLT: By what authority, in other words, is my inquiry, did they undertake to value the Blue Ridge Railroad?

MR. HARRISON: The authority conferred upon them by the Act of the State of West Virginia, which is identical with the Act of the State of Virginia, which is as follows, "And may also purchase"—that is the Chesapeake and Ohio Railroad that had been chartered —"And may also purchase the right of the State of Virginia in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road at the time of purchase, under the contract with the Virginia Central Railroad Company, said amount to be ascertained by the Commissioners of the Covington and Ohio Railroad Company." In other words, there was no limitation upon the power of the Commissioners of the Covington and Ohio Railroad Company imposed by the Act of either State, but they were given unrestricted authority to ascertain the value.

THE MASTER: Are those the same Acts that required the Covington and Ohio to construct a railroad from Covington to the Ohio River?

MR. HARRISON: Yes, sir.

THE MASTER: This map indicates that at that time, or in 1861, the road from Covington to the Ohio River was simply located and not built.

MR. HARRISON: It was was not built; no, sir.

THE MASTER: This map indicates that about nine-tenths of that road would be in Virginia and about one-tenth in West Virginia. Have I got it right in my mind here?

MR. HARRISON: If your Honor will recall, the little town of Covington——

THE MASTER: It was constructed up to Covington, according to this map.

MR. HARRISON: It was. When the War began they were building the tunnel, several millions of dollars were spent in building the tunnel under the Alleghany Mountains.

THE MASTER: The practical fact is that in 1861 a road had been constructed to Covington and was in operation.

MR. ANDERSON: No, sir; in 1861 only to Jackson's River.

MR. HARRISON: How far is that from Covington?

MR. ANDERSON: About six or seven miles.

MR. LILLY: And it had been graded up to Covington.

MR. ANDERSON: A great deal of money had been spent west of Covington, there had been three or four millions spent west of Covington. The State was the sole owner of the Covington and Ohio.

THE MASTER: Let me see if I have this correct. I want it in the record. According to this plan, the Covington and Ohio Road had been constructed to within about five or six miles of Covington, and was in operation in 1861?

MR. ANDERSON: Yes, sir.

THE MASTER: And it had been created and partly constructed to this line of division between the two States, and from that line on to the Ohio River it had simply been located and not constructed; and as a part of the consideration for this sale the Chesapeake & Ohio Railroad agreed to construct the road from Covington to the Ohio River?

MR. HARRISON: Yes, sir.

THE MASTER: That road, as a part of this sale, was under obligation to construct and operate a railroad from Covington to the Ohio River, and that in 1861 had been built up to the line.

MR. ANDERSON: No, further than that.

THE MASTER: Beginning at Covington and going towards the Ohio River there had been grading done up to the White Sulphur Springs, and from the White Sulphur Springs on, to a point somewhere near Gumbot, the road had simply been located.

MR. ANDERSON: There had been some money spent there.

MR. HOLT: There was no road constructed up to Covington.

THE MASTER: The contract under which the Blue Ridge Railroad Company was sold required the Chesapeake & Ohio to construct and complete and operate a road clear to the Ohio River. Am I right about that?

MR. HARRISON: That is right, sir.

THE MASTER: We have not anything definite in the record to show how much of the roadbed had been constructed.

MR. ANDERSON: But your former report showed how much had been expended in Virginia.

MR. LILLY: $1,114,000, or something like that, that had been expended.

MR. HOLT: That was not done by the State of Virginia, however?

MR. ANDERSON: Yes, that was done by the State of Virginia. The State of Virginia was the sole stockholder of the Covington and Ohio Railroad.

MR. HARRISON: That was one of the things that the State of Virginia agreed to do in 1861, to build that road.

THE MASTER: One of the main considerations of this sale was the $625,000, or whatever the amount is, and the agreement to construct and operate the road.

MR. HARRISON: To build from a point near the State line to the Ohio River. In other words, to carry out the original design of the Covington and Ohio Railroad, and the two States passed concurrent Acts so as to satisfy the Covington and Ohio Railroad Company.

MR. LILLY: You charged under your report $1,146,460.42 as expended in Virginia.

THE MASTER: Up to 1861?

MR. LILLY: Yes, sir.

THE MASTER: What page of the report is that found on?

MR. ANDERSON: Page 83 of your report, Covington and Ohio Railroad Company, $1,146,460.42. How much, and where, that was spent, I think, did appear in the testimony in a general way. A good deal of it was on the tunnels.

MR. HOLT: What was the eastern terminus of the Virginia Central Railroad?

MR. ANDERSON: The eastern terminus was Richmond.

MR. HOLT: Was it Richmond?

MR. ANDERSON: Yes, it was Richmond.

MR. HOLT: Was that the headwaters of the Chesapeake?

MR. HARRISON: It was of the James.

MR. HOLT: These concurrent Acts of the Legislature contemplated building a road across both States, with a bigger mileage in Virginia than in West Virginia.

MR. ANDERSON: The contract required them to build from Richmond. The road was already built to Richmond.

THE MASTER: The mileage of the road when fully constructed would be how much?

MR. ANDERSON: About 420 miles, something about that, from Richmond to Huntington.

THE MASTER: Evidently it would be more in Virginia than in West Virginia.

MR. ROBINSON: You may cross-examine.

By the Master:

Q. I want to inquire of Mr. Potter this. Have we got anything here which shows what this rule is that is referred to in the first part of this extract, "The rule established by award of the Commissioners of the Covington and Ohio Railroad, dated May 25th, 1867"?

A. No, sir.

Q. Do you know anything about the rule?

A. No, sir.

MR. ROBINSON: That is all, Judge Holt.

THE MASTER: I want to ask Mr. Potter another question.

Q. We have an Act in here authorizing the organization of this road under auspices of these Frenchmen. What was that Act?

MR. ANDERSON: There was one before the War and one after the War.

MR. ROBINSON: That begins on page 176 of the exhibits.

THE MASTER: I want to inquire of Mr. Potter and see whether he knows anything about this. I understand that this proposed Virginia Canal Company and the arrangement with the French people never was consummated?

MR. ANDERSON: No, it never was.

THE MASTER: But this Act, in Section 6, page 189 of the exhibits, provided that the Virginia Canal should issue to stockholders of the James River and Kanawha Company, other than the State, certificates, etc., and then pay annually to the holders of such certificates five per cent. per annum on the amounts thereof. What I want to find out is whether there is anything in the history of this legislation or of the James River and Kanawha Company upon which that peculiar provision was predicated, and whether that Act would have required that Company to pay to the stockholders other than the State, five per cent. Can anybody give me any information about that? This is February 3rd, 1866. Can anybody give me any information of any facts, legislative or otherwise, upon which the peculiar provisions of that Act were apparently predicated?

MR. HARRISON: Nothing but the expectation——

THE MASTER: Was there anything in legislation or anything in the records of the Company that would

lead to the differentiation, so far as the dividend is concerned, as far as stockholders other than the State are concerned?

MR. ROBINSON: It appears that that was embodied in the statute passed March 29th, 1861, and that that statute incorporated a resolution of the stockholders passed on the 1st day of September, 1860.

THE MASTER: Where is that?

MR. ROBINSON: That is in the Act.

THE MASTER: Where do you find it in the Act?

MR. ROBINSON: If you begin at page 176 you will find the Act quoted, and the first paragraph is a Whereas, and then at the second paragraph there begins the agreement. That Whereas recites that the James River and Kanawha Company at their meeting in August, 1860, authorized an agreement between the president of the Company, in pursuance of such authority, and Bellot des Minieres and his associates, to which the Board of Public Works of the State gave its assent, as evidenced by the signature of its president. And then the agreement recites that it was entered into on the 1st day of September, 1860, and that agreement, among its other terms, provides, on page 178, that the outside stockholders may exchange two shares of their stock for one share of the new five per cent. stock.

MR. ANDERSON: They gave up half their stock, in other words.

THE MASTER: That Company was never incorporated?

MR. ANDERSON: The Virginia Central was incorporated.

THE MASTER: There is a tentative piece of legislation under which nothing was done.

MR. LILLY: I think the answer would be this, your Honor. At Section 6, the outside stockholders had certain rights there, but in Section 17 Virginia took care of herself by requiring an annuity of $135,000 a year, or the equivalent of six per cent. on $2,500,000 —I believe it to be $2,500,000.

MR. ANDERSON: Five per cent. on $2,500,000.

MR. LILLY: She was taking $135,000 a year.

THE MASTER: That is Section 17, on page 182?

MR. LILLY: Yes.

THE MASTER: That may take care of the whole situation.

MR. HOLT: And the whole thing fell through.

MR. ANDERSON: I suppose the State expected to get collateral benefit from the development of her territory.

THE MASTER: This clears the matter up, because it shows that the outside stockholders were taken care of in one way, and the State of Virginia in another way. The whole thing fell through, to be sure. This Section 17 shows that they were taking care of themselves as well as of the outside stockholders.

MR. LILLY: They were to invest not less than $20,000,000, and they had to widen the canal basin.

MR. ANDERSON: Where they would get water to fill the upper levels of that canal was left to conjecture.

MR. HOLT: Was that the thing they were going to carry over the mountains?

MR. ANDERSON: Yes, sir.

MR. LILLY: Section one on page 188 of Volume 2, shows the amount to be not less than $20,000,000, nor more than $35,000,000.

MR. HARRISON: It contemplated an expenditure of an enormous amount of money to carry that out.

At this point a recess was taken until 2 P. M.

AFTER RECESS:

MR. HARRISON: Mr. Littlefield, those books are here, four or five of them.

THE MASTER: Did you get all you wanted?

MR. HARRISON: It is understood that as soon as we are finished with them I would like to express them back to Mr. Axtell and get rid of the responsibility for them.

Continuation of the examination of ARTHUR G. POTTER:

Cross-Examination by Mr. Holt:

Q. In your Exhibit No. 24, Mr. Potter, relating to the James River and Kanawha Company, I understand that you cover a period of twenty-five years, from 1835 to September 30th, 1860; is that correct?

A. Is that page 68, Judge, in the exhibits?

THE MASTER: His question is whether in your Exhibit No. 24, beginning on page 1187 and running up to page 1190, you cover a period of twenty-five years of the James River and Kanawha Company.

THE WITNESS: I used the caption used in the report, and I am not sure whether it is twenty-five years. It is from the date of the organization of the Company to September 30th, 1860, and I have not inquired as to the exact date of the organization.

Q. And the object of your exhibit was to show that the expenditures exceeded the income during that period by $1,302,955.75; is that true?

A. Yes, sir; that is true.

Q. Now you embraced in your sum total of expenditures, on page 1189, the following items, as I understand it; annuity to the old James River Company, $517,500——

A. Yes, sir.

Q. Likewise the dividends on the guaranteed loans, of $1,390,740.81?

A. Yes, sir.

Q. Interest on State loans of $1,870,032.83?

A. Yes, sir.

Q. Interest on North River Navigation Company bonds of $80,590.57?

A. Yes, sir.

Q. Also interest on bills payable, interest on auditors' certificates, other interest and discount. All of those items which appear on page 1189 of Volume 3, new print, as I understand your exhibit, help to make up the sum total of what you call operating expenses; is that so?

A. No, sir; my certificate says for maintenance, up-keep, expenses and interest. I do not designate them as strictly operating expenses.

Q. Would the annuity to the old James River Company be an operating expense?

A. It was a constant charge on the revenue of the Company; I believe it would.

Q. It would be an operating expense, you think?

A. In that sense, that any money paid for the carrying along of the Company's obligations would be an operating expense.

Q. Would dividends on guaranteed loans be an operating expense?

A. I believe that is interest on guaranteed loans; that would be an expense.

Q. I am reading from the exhibit, dividends on guaranteed loans $1,390,740.81.

A. Well, I believe that the word dividends meant interest, because dividends, strictly speaking, would be declared by the Board of Directors, and these were obligations assumed for loans.

Q. Well, would that be an operating expense, call it interest or dividends?

A. I think it would be a charge against revenue, and I would not call it an operating expense, strictly speaking, but the result is about the same, that it would come out of revenue before any dividends could be declared by the Company.

Q. Interest on State loans, would that be an operating expense?

A. In the same sense that I have just stated, it would be.

Q. Interest on North River Navigation Company bonds, would that be an operating expense?

A. The same answer.

Q. And you make the same answer on bills payable?

A. Yes, sir.

Q. Likewise as to interest on auditors' certificates?

A. Yes, sir.

Q. Also with respect to other interest and discount?

A. Yes, sir.

Q. Now it is by adding of these and other amounts together that you get the sum from which you deduct the total income for the period covered, in order to get at the deficit?

A. Yes, sir.

Q. Can you tell us, without too much inconvenience, Mr. Potter, what those items would aggregate to which I have called your attention?

A. $4,098,109.73.

Q. Now if you will subtract the amount of that deficit from that, it will leave you what? Your deficit is $1,302,955.75.

A. $2,795,153.98.

Q. Then if the items aggregating the $4,098,109.73 were not to be treated as an operating expense and were to be stricken from your exhibit, it would leave you $2,795,153.98 as the net operating income covering that period, would it not?

A. The net operating income, exclusive of interest on the Company's obligations; it would be $2,795,153.98.

Q. When did this interest cease?

A. I judge from these figures that it ceased with the exchange by the State of Virginia of capital stock in the James River and Kanawha Company for the debt owed by the Company to the State.

Q. Do you recall what year that was?

A. 1860.

Q. Do you know what kind of stock she received in payment of these debts upon which this interest accumulated?

A. I judge from the Act that it was preferred stock.

Q. Was it preferred as to income or preferred as to income and principal both, under the Act?

A. I do not know. The Act I presume would show.

MR. HOLT: Is that Act in the record? I presume it is.

THE MASTER: Yes.

MR. HARRISON: In the old record or in the new one?

MR. ANDERSON: In the old record. That is the Act of the 23rd of March, 1860.

THE MASTER: The preference is as to income, as I remember it; not as to principal and income, but as to income only.

MR. HOLT: Of course that is always the way they arranged preferred stock, but Virginia had apparently a peculiar way of doing many things, by her Legislature. What is the date of that Act?

THE MASTER: I presume it is March 23rd, 1860; I presume that is right. What page is that found on in the new record? Wherever these references can go in, it saves me a good deal of work.

MR. HOLT: Page 1147 of Volume 3.

THE MASTER: That is right. It was passed March 23rd, 1860. The Act was to take effect when accepted by the stockholders of the James River and Kanawha Company. I do not know whether there is anything in the record that shows that or not.

Q. Now, I believe you said you excluded from your aggregate of expenditures certificates to the First Auditor amounting to $469,188.30, and the certificates to the Second Auditor amounting to $202,821.30?

A. Yes, sir.

Q. Those two groups were omitted, were they not?

A. Yes, sir.

Q. I believe you said you could find nothing that indicated to you what they were?

A. Well, in the limited time that I had at my command I could find nothing.

Q. Is it not a fact that all of those certificates to the First and Second Auditors represented dividends?

A. That I do not know.

Q. Will you turn to page 1145 of the James River and Kanawha, Volume 3, which analyzes those certificates for the year 1880, and tell me whether or not they do not all represent dividends.

A. It states that they are dividends, yes. I believe they are interest on loans.

Q. Well, page 1145 is part of a certificate of Mr. Rosewell Page, is it not?

A. Yes, sir.

Q. And that is the record—I mean that is a certified copy made by him from the records at Richmond, is it not?

A. Yes, sir.

Q. Well, he sets down there the certificates to the First Auditor in each case to be dividends, does he not?

A. Yes, sir.

Q. And likewise the certificates to the Second Auditor to be dividends?

A. Yes, sir.

Q. Well, why would you say then that you believe them to be interest?

A. Because I do not think the dividends would be paid except on capital stock, and there is no record anywhere of dividends being paid on capital stock; therefore I conclude that these dividends must mean interest on loans.

Q. Well, the record calls them plainly dividends.

A. Yes, sir.

Q. In every instance?

A. Yes, sir.

MR. ANDERSON: No, not on page 1142.

MR. HOLT: I am talking about page 1145 now.

Q. How would a dividend be paid to the State of Virginia on capital stock?

A. I presume by a check of the Company, drawn to the First or Second Auditor.

Q. It would be a certificate, would it not, or a check?

A. It would be a check, yes, or a voucher.

Q. I believe you said this, Mr. Potter, that you did not find any evidence of construction account——

THE MASTER: Just a moment before you pass that, Judge. Do I understand that you think the item of $420,512.83 is practically identical with $469,188.30? You have just been inquiring about the dividends of 1839, dividends tide water connection, dividends S. S. and R. connections, and there are a lot of items that aggregate $420,512.83?

MR. HOLT: No, page 1145 simply gives the analysis of the payments for 1860, to the First and Second Auditors, and we thought that was indicative for all the years.

THE MASTER: The first item says dividend of 1839. I simply want to get it into my head as we go along. Here are certificates of Second Auditor, dividends of 1839. I would like to have explained, if it was a dividend, how a dividend of 1839 turns out to have been paid in 1860, twenty-one years afterwards.

MR. LILLY: They did that on the various railroads.

THE MASTER: I want to get something into the record, I do not want it to be a matter of conjecture, but I want to know if there is anything in the record that will give me any information about it.

MR. HOLT: All that we know about it is what this page shows. We have the record there covering the year 1860, in connection with the James River and Kanawha Company, which analyzes the certificates for that year to the First and Second Auditors. Well, they are said to be dividends, and we thought that that would be a pretty strong indication as to what the certificates back on page 1148-A meant.

THE MASTER: What I want to get at is, how a dividend for 1839 happened to be postponed until 1860.

MR. HOLT: There seems to be nothing here to show.

THE MASTER: Well, then that covers that.

By the Master:

Q. Do I understand you to say that interest to the State would be paid by certificates to the First Auditor?

A. No, I said it would be likely that it would be in the form of checks drawn to the First Auditor or the Second Auditor, according to the manner in which the loan was made to the Company.

Q. What are those certificates to the First Auditor, how do they come about?

A. I am at a loss to understand.

MR. ROBINSON: I was going to state, by way of explanation.

THE MASTER: Well, put it in later. Any statements outside of the record don't go.

MR. HOLT: I would like to hear Mr. Robinson's explanation, but the stenographer need not take it.

THE MASTER: Yes, let the stenographer take it. What is the use of asking Mr. Robinson to make an explanation that does not go into the record? I am not going to determine the case on something that is said that does not go into the record. Mr. Robinson or any other counsel need not make any explanation to me— what I mean is, whatever explanation goes in here on either side must be predicated upon some fact in the record, so that I can fall back on the fact.

MR. HOLT: I was asking for an explanation for my benefit.

THE MASTER: Go ahead and make it, Mr. Robinson, and take it right into the record. All of these things ought to go into the record, because I ought to have them where I can refer to them later on, if they are going to have any influence on me.

MR. ROBINSON: On the original hearing West Virginia filed an exhibit, Defendant's Exhibit G-1, found at pages 820-A to 820-M; and the last two pages of that exhibit, 820-L and 820-M, refer to the James River and Kanawha Company, and the dividends received by the Commonwealth on its capital stock in that Company are given in that Exhibit, and they show one dividend of $10,092, paid in 1836.

MR. LILLY: How does that explain other dividends?

MR. ROBINSON: Just a minute. That was the only dividend ever paid by this Company, according to this exhibit filed by West Virginia on the original hearing.

THE MASTER: Now, where does that exhibit show that it was paid in 1836?

MR. ROBINSON: The last two pages. The exhibit is about ten or twenty pages long. There it is right there (indicating).

THE MASTER: Oh, yes, I see it.

MR. ROBINSON: On the strength of this exhibit the Master found, at page 193 of his report, "The only dividend that the Company appears to have ever paid is $10,092. in 1836," referring to page 820-L of the record. Referring to page 1105 of Volume 3, being Document No. 17, it appears that there was overdue interest owing to the State amounting to $1,301,500.15. And as, according to West Virginia's Exhibit, no dividends were ever paid on the stock, I take it that these certificates are certificates issued to the State from time to time for interest that has not been paid. In other words, they are returns on loans and not on stock; you can characterize them as dividends or you can characterize them as interest, but they are returns on loans, and they are not returns on stock. The holdings of the State up to 1860 were very largely in bonds of the Company, and I think you can assume the accuracy of the statement and the correctness of the figures. That was checked by Mr. Potter, the accountant for Virginia, we understood.

MR. HOLT: But still the fact remains the same, that we find in this exhibit, certified from the records by Mr. Page, a declaration here of dividends, dividends, dividends——and what on?

MR. ROBINSON: You constantly say that dividends were paid on loans. Look at page 1145 and page 1144.

MR. HARRISON: Take page 1147.

THE MASTER: Let us have one page at a time.

MR. HARRISON: Take page 1147, and you will find that these dividends are described as dividends on guaranteed loan, $33,603.40.

MR. ROBINSON: Also page 1144.

MR. HOLT: I know, but on page 1146 and also page 1147 you find certificates here to First Auditor, interest on bond to the State, interest on loan of State stock, interest—wherever it is interest, it calls for interest.

MR. ANDERSON: I think the explanation is this, if your Honor please, and I think it is shown by this record; your Honor will find that at page 1148 there is an item among the disbursements of this Company of $118,500, dividends, declared on James River Company. That was an annuity which that Company, the James River Company, was primarily bound for, but which the State had guaranteed.

MR. ROBINSON: I would like to finish my statement. Now, referring to the items that Judge Holt mentioned on page 1145, and looking at the same items on the large sheet, page 1148-A, and comparing the dividends of 1839 on page 1145 with the dividends on guaranteed loan of 1839, it becomes apparent that they both refer to a loan as of that date.

MR. HOLT: They are separate items, are they not?

MR. ROBINSON: One is for the year, and the other is for the entire period. Then comparing dividends tide water connection with dividends on guaranteed loan for tide water connection, and in the same way comparing dividends S. S. and R. connections with dividends on guaranteed loan for the Southside and Rivana connections, and comparing dividends third division with dividends on guaranteed loan for the third division, the first statement referring to 1860, and the other to the entire period, it appears that the return is on a loan instead of on the stock, irrespective of the way that it is characterized.

THE MASTER: This will simplify it somewhat. On the strength of the exhibit that was put into the case originally on the first hearing, by West Virginia,

checked up by the accountants of Virginia, the books of Virginia show that only a dividend of $10,000 was paid in 1836. Now, then, I shall hold that there was no other dividend paid on the stock of Virginia during that period, unless somebody can show me some record from the books of Virginia showing that an additional dividend was paid. That does not necessarily dispose of these items of course, but that takes care of that phase of it, so far as the stock is concerned.

MR. HOLT: These items on page 1145 are an exact copy of the record as it stands down there.

THE MASTER: Yes, I understand that.

MR. HARRISON: I would like to call your Honor's attention there to this fact—or perhaps Mr. Robinson did that——

THE MASTER: What is that

MR. HARRISON: It is in explanation of that entry on page 1145, of dividends in 1839, which you commented upon as being strange that they should be receiving a dividend in 1860 that was declared in 1839.

THE MASTER: Yes, precisely.

MR. HARRISON: Now, if you will look on page 1148-A you will find among the disbursements there dividends on guaranteed loans of 1839, $1,179,134.44.

THE MASTER: "Dividends of 1839, $60." That is evidently an abbreviated way of stating that interest amounting to $60. had been received and credited on the loan of 1839.

MR. ANDERSON: The total amount is $1,179,000.

THE MASTER: I get the point. But we are looking now at the accounts that appear to have been kept by somebody in the employ of the James River and Kanawha Company. Now, there are two sets of accounts

that appear to relate to these accounts of the James River and Kanawha Company; one set is kept by Virginia, and now here is another set, and these are open to explanation and comment. I shall hold that so far as the books of Virginia are concerned, that she did not receive any dividends upon her stock, unless I can be shown that there is some book that shows that there was a dividend in excess of $10,000. What I hold about this is what I find about the items here and their relation to that.

MR. HOLT: I thought somebody could give us a little light, but instead they are simply indulging in commentaries on the record that we already have before us. In other words, that is a matter of argument rather than of proof or help.

THE MASTER: They are simply calling attention to other facts in the record which they think explain it, that is the idea, and that gives us the benefit of their idea at this time.

MR. HOLT: Shall we go on with the examination, your Honor?

THE MASTER: Yes, go on with the examination.

By Mr. Holt:

Q. Mr. Potter, I understood you to say that you saw nothing in the books that would indicate what portion or proportion of these expenditures, tabulated by you, were on account of construction. Is that the fact?

A. I so testified, with the exception that since I made these figures certain exceptions have been called to my attention.

Q. Well, now, look at the copy of the record of the James River and Kanawha Company, page 1143, Volume 3, and see if you do not find several items there under the general heading

disbursements, that were on construction. Take the item of $23,477.31; that is expressly designated as construction, is it not?

A. Yes, sir.

Q. Then, you have an item of $3,066.66, pay of engineers; that would be on construction, would it not?

A. Yes, sir.

Q. Then, you have the Lynchburg feeder canal, $2,825.34; that would be construction, would it not?

A. It says construction, yes.

Q. Then, you have expenses of engineers, $637.70.

A. That might be either construction or general maintenance charge.

Q. Turn to page 1099 of the same record, and see if that item can be traced.

A. Those are the items which I have just referred to.

THE MASTER: At page 1099?

THE WITNESS: Yes, sir, page 1099.

Q. On page 1099 of Volume No. 3, under the head of construction you have, Lynchburg feeder canal, $2,825.34; third division, $1,573.14; fourth division, $637.70. That is the sum of expenses of engineers on page 1143, is it not?

A. $637.70, yes sir; it is there designated as construction, yes, sir.

Q. Turn now, Mr. Potter, to page 1142, printed Volume No. 3, and see if you do not find another construction item of $1,559.43.

A. Yes, sir, New Canton Bridge.

Q. Also turn to page 1148 and tell us whether or not the item under disbursements, locks, of $1,573.14, is construction.

A. It is under the heading of unfinished improvements. The natural presumption would be that it was construction.

Q. It would be construction?

A. That is the natural presumption.

Q. Turn now to page 1099 and see if you do not find this item of $1,573.14 set down expressly as under the head of construction.

A. $1,573.14 on page 1099, that is right, construction, third division.

Q. Then these books and records down at Richmond do disclose the construction account, do they not?

A. Yes, sir.

Q. And you made up your exhibit regardless of construction?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you not put everything into disbursements, whether it was construction or what not?

A. No, sir.

Q. Well, have you no construction items in there?

A. Yes, sir, page 1190, $9,482,484.46.

Q. No, I mean in striking your deficit, the difference between income and out-go, did you not——

THE MASTER: What do you mean now, for the whole period or for the first year?

MR. HOLT: For the whole period. I am going to take both.

Q. In striking your deficit, the differences between income and out-go, did you not utilize construction items?

A. I utilized them as capital expense, ignoring them as income and operating expense.

Q. Now, in the year 1860 did you not treat construction items, or moneys spent in construction, as if they were disbursements in the ordinary operation of the canal?

A. No, sir, I did not.

Q. You did not?

A. I merely made a copy of the figures as they appeared in the reports of the Company.

Q. But construction items do there appear?

A. Yes, sir.

Q. Well, would they properly be chargeable to operating expenses?

A. Certainly not.

Q. But you have so used them, have you not?

A. No, sir, I merely made a statement of receipts and disbursements, classifying them as they appeared in the books containing the reports of this Company; and in my direct examination I simply stated that if those items contain construction items the deficit that I indicated would be reduced to that extent.

Q. But not having picked them out, you do not know what the reduction in the deficit would be?

A. No, sir.

Q. Therefore your deficit is unreliable, is it not?

A. The deficit that I have certified, and the only statement that I have certified, is not unreliable; it is reliable as based on the figures published.

Q. What I mean is this, Mr. Potter; is it not misleading? Does it in reality show the difference between income and expense of operation?

A. To which period do you refer now, before I answer that question?

Q. Well, I am referring to the year 1860 in these last questions.

A. I have told you that I have made no conclusions for the year 1860, except as qualified by the statement I made under the examination of Mr. Robinson.

Q. Well, the year 1860, a portion of it at least, was embraced in your first period, was it not, from 1835 down to September 30th, 1860?

A. Yes, sir.

Q. And that is the period during which you found this deficit of $1,300,000 odd?

A. A deficit of not less than $1,300,000.

Q. Not less than that now?

A. Yes, sir.

Q. And that deficit was arrived at, as I understand you, in part at least, by using the construction items that were in part in the year 1860?

A. No, sir, your understanding is wrong. I testified that I took the figures that I found in the published reports, the secretary's report of the receipts and disbursements, from the beginning of the organization of the Company to 1860, September 30th, and in that group of accounts is a construction account to the extent of $9,482,484.46, which I understand contains all of the items which you have asked me about in these preceding pages. I have made no inquiry to determine whether they did or not, accepting the figures as they were reported, and certifying to that extent.

Q. Coming now to the Blue Ridge Railroad Company, Mr. Potter, I believe that you filed as your Exhibit No. 26. Am I right about that, Exhibit No. 26?

A. Yes, sir.

Q. What valuation did these commissioners, according to this exhibit, put upon the Blue Ridge Railroad?

A. $625,348.08.

Q. Are you not in error about that?

A. I think not, sir.

Q. Did they not put a valuation on it of $490,734.99?

A. No, sir.

Q. And did they not obtain the $600,000 by adding to the $490,734.99 unpaid tolls?

A. The $490,734.99 is the present value of tolls to accrue, that is not the value of the road.

Q. What was it they were valuing?

A. They were valuing the tolls to accrue, as I understand it.

Q. They were valuing the tolls to accrue, and were treating that as the value of the road, were they not?

A. Not necessarily.

Q. Then they never valued the road at all?

A. Maybe that is true.

Q. Well, I want to find out what it means. Did the Commissioners of Virginia and West Virginia value the Blue Ridge Railroad Company?

A. I rely upon the original document, to which I refer here, for the conclusion that they did.

Q. And you think the value they placed on it was $612,922.76?

A. No, $625,348.08. That is the price they paid for the road.

Q. What is the difference in the figures?

A. Interest.

Q. The $625,348.08 is made up of what items, Mr. Potter?

A. Amount of tolls, etc., accrued and unpaid, $122,187.77; present value of tolls, etc., to accrue, $490,734.99; and interest, $12,425.32.

By the Master:

Q. Where do you get that last item?

A. It is a combination of five items appearing at the bottom of the page, interest to April 1st, 1870, $2,289.43; interest to April 1st, 1870, $3,832.78; interest to April 1st, 1870, $3,438.63; interest to April 1st, 1870, $2,383.57; interest to April 1st, 1870, $480.91.

MR. HOLT: That interest, your Honor, explains the difference between the amount I gave as the valuation a while ago and the corrected amount that was given. I gave $612,922.76, and you said it was $625,348.08, which it is after you add that interest.

THE MASTER: I understand the $12,425.32 added to $612,922.76 amounts to $625,348.08; is that it?

THE WITNESS: Exactly, and that is the amount that the Commissioners ascertained to be the value of the road on the 1st day of April, 1870, as disclosed on the document that I have referred to.

By Mr. Holt:

Q. Now, then, can you tell us how they arrived at the $490,734.99?

A. No, sir, I have made no inquiry.

Q. Did they not ascertain it according to the actuary tables?

A. I do not know.

Q. What was the largest toll paid by that road for any one year?

A. I do not know. It says here, amount of tolls accrued and not paid—the largest amount there is $32,061.40.

Q. And that was in the year 1869, was it not?

A. Yes, sir.

Q. What was the original cost of the Blue Ridge Railroad?

A. According to this statement it is $1,694,870.85.

Q. Now, if you will deduct $191,458.32 from the cost of the Road, leaving you $1,503,412.53, and divide that by the toll for the year 1869, you will get 43, won't you?

A. I merely copied this statement; I merely copied it.

Q. I understand, but we want you to analyze it now. You can do it better than I can, that is why I am asking you. You get forty-three years—well, we will call it years. Then when you look at the actuary table——

THE MASTER: What actuary table?

MR. HOLT: I have one here, furnished by the Chesapeake & Ohio Railroad; it is one they use.

THE MASTER: Have you got this rule referred to there? If you have, let me have it right now.

MR. HOLT: I was going right on through to show what they did, by Mr. Potter. They took the cost of the road, then they took the largest toll in any one year, and divided that toll into the cost of the road, and they got 43 as the result. They turned to the actuary tables to find out what number they must then multiply by in order to get the present value of those tolls—it is like the old mortality tables—and it

gave them $490,000; to which they added tolls unpaid but accrued theretofore, which lifted it to the $600,000.

THE MASTER: On the theory that it was worth that much?

MR. HOLT: It would take the annual tolls just forty-three years to pay the cost of that road; and when you turn to the actuary tables you will find they used the decimal 15 to get the present value.

THE MASTER: If they had taken an average of those tolls——

MR. ROBINSON: It might have been more. $490,000 is the present worth of $32,000 for forty-three years; and $32,000, for forty-three years would give the total cost to the State, less the tolls already received.

Q. That is what they did, Mr. Potter—is not that evident to you now?

A. Yes, sir, it is evident on the face of the figures.

Q. Now let me put this case to you. Suppose, Mr. Potter, that the State of Virginia on the 1st day of January, 1860, had completed the Blue Ridge Railroad, at a cost of $1,600,000, and had turned it over to the Virginia Central to operate, upon the payment of tolls, and that the tolls from January 1st, 1860, down to January 1, 1861, had amounted to $32,000; and then this joint Commission had sat down to find the value of that road, and had taken the $32,000 of tolls, and ascertained that it would take tolls of that amount a period of 43 years to produce the cost of the road, and had arrived at a value on the 1st day of January, 1861, of $490,000, by that process, of that road, would you say that that would represent the value of the road at all?

A. No, I do not think so.

Q. In other words, the State of Virginia under such circumstances would spend $1,600,000, and then sell it on a toll

basis, in less than twelve months, for $490,000—would not that be the result, taking the illustration I have given?

MR. LILLY: I do not want to criticize, and I know it is inadvertent, but I notice some counsel are suggesting or talking before the witness answers there.

THE MASTER: Is not the fact of more or less income a feature in the value of the property? Suppose they had spent $1,500,000, and it was not worth on the earning basis more than $500,000?

MR. HOLT: That may be true, your Honor, but so is my suggestion. You cannot tell what it was worth in 1861 by ascertaining what it was worth in 1870.

THE MASTER: I do not see how you can ignore the income bearing value of the property.

MR. HOLT: We ignore it for this reason, that the actuary tables do not value property upon the income basis at all. The theory of the actuary tables is the payment of a toll that will discharge principal and interest within a given time. And that is not the history behind this Road at all.

Q. Do you know, Mr. Potter, what the contract between the State and the Virginia Central Railroad Company was, upon which these tolls should be paid?

A. No, sir.

MR. HOLT: You need not take this in the record——

THE MASTER: Yes, take it in the record; I want it all.

MR. HOLT: It was never contemplated by the State of Virginia or by anybody else that they should lease this Road out until it should be paid for by tolls. Under the contract, as I understand it, the Virginia Central would have gone on paying the tolls, and after

they had paid all the tolls, and the State had received them, the State would still own the Road.

THE MASTER: Have we got that contract in the record?

MR. HOLT: I do not know whether we have or not. I think we had better have it in.

THE MASTER: I think so, too. I want the contract.

MR. HOLT: Your Honor might construct a house today and rent it to me for $5,000 a year for five years; after I had paid you the $25,000, the rental for five years, you would have the rental and still have the house. In other words, they have adopted a rule of valuation here that goes to actuary tables, and that was never contemplated at all. The State of Virginia simply leased the Road to the Virginia Central.

THE MASTER: What you mean is that the Commissioners of Virginia and of West Virginia adopted a false basis, and the Legislatures ratified it.

MR. ANDERSON: They agreed in advance that that should be the value; it is West Virginia's act as much as Virginia's, and Virginia is the only person that suffered by it.

MR. HARRISON: If there was any suffering at all.

MR. ANDERSON: We will show you before we get through that that is undoubtedly the truth in this case.

MR. HOLT: We did not have, according to the theory of things here, any interest in or control over the property at all. We had an equity in it, it is true, according to our theory. But here is a Road that is valued—I do not care by whom—in the year 1870, which is an utterly immaterial date, on any horn of the dilemma, to take in this case, whether it is January 1, 1861, or June 20, 1863. But this exhibit we do not

deem worth anything at all; they never did value the Road; they went upon the theory of annuities, that had nothing in the world to do with this transaction, nothing whatever.

THE MASTER: Well, what did it have to do with? Here are two sets of Commissioners, appointed by these two States, for the purpose of selling this property. Now they reach a certain basis for a certain reason. Now, what did it have to do with?

MR. HOLT: They undertook, and the language of the Act, as Mr. Harrison read it there this morning—they were given power to value, that is true, to value that property as of that date, 1870. They undertook to do that. Now, even if both States are bound by it, still that does not affect this suit, because its value in 1870 does not constitute its value at any other time. But even for 1870, the way they value it, even though everybody might be bound by it, it strikes me as being utterly ridiculous. I could, by leasing my road out one year, after it had cost me $100,000,000, by that process let some fellow take it away at one-tenth of its cost, and perhaps at one-tenth its actual value. They are applying to it an annuity table, which the history of the Road never contemplated at all.

MR. ANDERSON: That is just as much West Virginia's mistake as it is Virginia's.

MR. HOLT: I understand your point on that. My answer to that is this, that even though the two States, West Virginia included, had the power, under legislative enactments, to value that Road in 1870, that is an utterly immaterial finding so far as this case is concerned.

THE MASTER: You stopped when you stopped on your direct examination the other day. The only time

when you made a change of base was when Mr. Hillman increased his schedule.

MR. HOLT: The value we claim in our exhibits is $1,600,000.

THE MASTER: You claim that that is the sales value, and the notes show it. Mr. Hillman testified before that that was the sales value, $625,000.

MR LILLY: That is what they got for it.

THE MASTER: That is what they say is its sales value.

MR. HOLT: Sales price.

THE MASTER: He said it was the sales value, and you stopped your case on it

MR. HOLT: Oh, no, your Honor.

THE MASTER: In your examination in chief you stopped your case on Mr. Hillman's statement that it was the sales value; and then he said on the cross-examination that, under the circumstances, to make the schedules consistent, he would make the claim for 1861 $1,600,000. That is exactly how the case developed.

MR. ROBINSON: If you will turn to page 13 of the exhibits you will find defendant's summary filed on the direct-examination, and you will see the Blue Ridge Railroad Company, built by the State, par $1,604,-723.23, value $625,348.08.

MR. LILLY: There is a double star, and it says, "Sales value;" that is what it brought.

THE MASTER: That is what I am saying; when you stopped your case in chief you stopped on the testi-

mony of Mr. Hillman that that was the sales value. If he had seen this, he did not take the pains to give us the benefit of it.

MR. HOLT: That may be true, but let me give you the history of this exhibit here.

MR. HARRISON: Judge, will you let me interrupt you?

MR. HOLT: No, I want to make my statement first.

MR. ANDERSON: This argues the case in piecemeal.

THE MASTER: This is perfectly proper.

MR. HOLT: The Master asked me about this exhibit.

THE MASTER: Certainly, and we can develop this right here as well as we can later on. I want to get his views and your views.

MR. HOLT: If you will turn to Volume 2 of the present record, marked Exhibits, you will find on page 13 the original exhibit filed by Mr. Hillman. That gave as its value its sale price, $625,348.08. Now he corrected that by a substitute exhibit.

THE MASTER: What page is that?

MR. HOLT: That you will find on page 12-A, and that is where we ended our part of the case; and under the head of value we put it $1,604,723.23. And then under the head of claim disposed of for, just as an independent fact, $625,348.08. But the value claimed in that corrected Exhibit is the cost price of that Road.

THE MASTER: That is the corrected exhibit.

MR. HOLT: Yes, that is the corrected exhibit. Now, you have in mind this fact, that we never did correct it until his cross-examination came along; and as the

result of that cross-examination we substituted this new exhibit on page 12-A for the old exhibit on page 13.

THE MASTER: Well, now, my recollection is correct, is it not?

MR. HOLT: Absolutely correct, except that when we rested our case we rested it on this exhibit.

THE MASTER: When you see the record you will notice I do not go so far as this exhibit. I say, when you rested your case on his examination in chief——

MR. HOLT: It was the cross-examination that resulted in the correction of the exhibit.

MR. LILLY: What I wanted to call your Honor's attention to about those two stars there, alongside of the $625,000, there is a marginal note there that that is the sales value; and what was meant by that is sales price, and what we meant by it was the cost of construction.

THE MASTER: Page 12-A is a schedule that is filed subsequently to the schedule on page 13.

MR. LILLY: Even in that, when he said sales value it referred to the price Virginia got for it.

THE MASTER: If Mr. Hillman knew all about these facts when he drew that original schedule, No. 13, I want him to explain to me why he did not put them in.

MR. HOLT: You mean the report of the Commissioners?

THE MASTER: Certainly. The way this thing stopped was on Mr. Hillman's schedule of $625,000, and one statement by you in the record of $625,000. Now, if he knew about this statement here, and the manner in which this result was ascertained, what I

would like to have him explain when he gets on the stand is why he did not give me the information at that time.

MR. HOLT: All he was doing at that time, I presume, and he must have seen it, because there is where he would give the price at which it was disposed of——

THE MASTER: On this schedule he must have been expecting me to take his $625,000. Now, an entirely different condition develops. If he knew all about it at that time, I would like to have him explain, when he goes on the stand, why he did not put it in.

MR. HARRISON: Now I want to refer your Honor at this point——

THE MASTER: He is going on with the cross-examination.

MR. HARRISON: It is in connection with the cross-examination. I would like to call your Honor's attention to page 394 of the new record, where the cross-examination on the subject of the Blue Ridge Road began, my cross-examination there about the middle of the page:

"Q. Now take up item No. 5 of Defendant's Exhibit No. 3, page 13, the Blue Ridge Railroad built by the State. What was the total amount expended by the State for that Road January 1, 1861?

"A. $1,604,723.23, as shown on page 27 of the printed record.

"Q. What value as of January 1, 1861, do you put upon the total expenditure made by the State in the Blue Ridge Road which you have just given?

"A. $625,348.08.

"Q. How did you arrive at the value of that investment as of that period?

"A. It was the sales value as of that period.

"Q. When did the State receive the money or bonds, as the case may be?

"A. April 1, 1870."

MR. HOLT: That is all true, Mr. Harrison; I recall that; and it was as the result of your cross-examination that we put in the corrected exhibit, claiming the cost price instead of the sales price as of January 1st, 1861.

THE MASTER: That is the way I understand it.

MR. HOLT: That is the history that lies behind it. I thought the Master said when we rested our case we stood on it, but you did say and meant when we rested Mr. Hillman's direct-examination. Your statement was accurate.

MR. HARRISON: Your Honor will find by pursuing that—I do not care to go into all that, but when he was being cross-examined on that and asked to explain why he gave the sales value as of one period and the cost value as of another period, he wanted then to correct and make them harmonious, and exclude the sales value, and put the cost value at both periods, both 1861 and 1863.

THE MASTER: Go right along, Judge Holt. Anything further you have on that line you may reserve for your cross-examination, Mr. Harrison.

By Mr. Holt.

Q. Mr. Potter, have you ever examined the contract by which the State of Virginia let the Virginia Central Railway operate the Blue Ridge Railroad?

A. No, sir.

MR. HOLT: Do you know, Mr. Robinson, or you, Mr. Harrison, whether that contract is in this record anywhere, old or new?

MR. ROBINSON: It is not.

THE MASTER: It is not; I have looked for it very carefully. We had better have that contract, had we not?

MR. HOLT: I suspect we should have that contract. I do not know whether it is in existence or not. I never saw it.

THE MASTER: Does anybody know whether that is in existence or not?

THE WITNESS: I have seen it; it is in the records somewhere.

MR. HILLMAN: The cash book or journal where this entry starts, concerning this $90,000 which shall be added to the cost of the Road and expended by the Virginia Central, and then allowing them to reimburse themselves from the tolls, simply states that that is the agreement, but it does not enter into any details of the agreement. There must, of course, have been some understanding back of that, but I have never seen the agreement back of that, nor did I look for it.

THE MASTER: I think we ought to have that if you can find it.

MR. HOLT: Of course, that contract, if it is what I infer it is, would knock the valuation by mortality tables all to pieces.

THE MASTER: Well, whatever the fact is, it ought to be put in and given all the weight it is entitled to. We want to get all the facts, whatever they are.

MR. ANDERSON: I think there is a complete reply to Judge Holt's attitude.

THE MASTER: I cannot have go into this case as argument statements of fact that do not appear in this record, because they do not do me any good, and I cannot reach any opinion on them. Whatever there is that bears on this item that ought to be here in order to enable you to make your argument, and in order to enable me to reach a conclusion, must go into this record as a fact; because otherwise I have not anything to go and come on. I shall not make any finding unless there is something in this record that I can predicate it on. Arguments and explanations may be all right—I do not say now that the argument does not clean it up perfectly—but if the argument is not predicated upon something that is in the case it will fall right to the ground.

MR. HOLT: We could not expect you to do otherwise. What is it you suggest, Mr. Anderson?

MR. ANDERSON: It is all in the printed record, and was before we ever came here. I do not think it is wise to argue this case piecemeal as we go along; but there is an unanswerable argument in answer to your position.

By Mr. Holt:

Q. Mr. Potter, returning for a moment to your exhibit concerning the James River and Kanawha Company, you speak of a deficit occurring in a certain period of time of $1,302,955.75, without making any allowance for depreciation on the Company's property. Is it not a fact that they were renewing the property all the while, and spending money out of their revenues in that direction?

A. I have found statements in various reports indicating that that was done, but I have found also statements indicating that the property was in bad condition and needed further repairs, further replacements, etc.

Q. Can you tell me just where those statements are to be found?

THE MASTER: You mean the last statements?

MR. HOLT: Yes, sir, the ones indicating the property to be in bad condition.

A. On page 715 of this Volume 5 of reports of the James River and Kanawha Company for the years 1855 to 1860, at the top of the page, the chief engineer, E. Lorraine, reports——

THE MASTER: Is that printed here in this document?

THE WITNESS: It is not printed in the record in this case, but is to be found in Volume 5 of the James River and Kanawha Company reports.

THE MASTER: Very well.

THE WITNESS: The chief engineer reports, under date of December 14, 1859:

"Upon the first division the canal is generally in good condition, but the repairs of the mechanical work have not been kept up as well as usual, nor as well as economy and even safety demands."

Further on he says:

"The culvert near Pemberton, and the one on Mr. Mayo Cabell's Estate require re-building, both of them having been disrupted by breaches in the canal. There is constant danger at both of these culverts."

Then at the foot of the same page:

"I beg leave respectfully to urge upon you the propriety, nay, the absolute necessity of paying the present mechanics on the line, and re-instating those who have left because they were not paid."

Continuing, the report merely points out that there were many things that require—it is quite a long report—that require attention and require money.

Q. Now, you read the president's report for the same year, did you not?

A. I have read most of it, I believe, yes.

Q. And as you said a moment ago, you found some things indicating it was out of repair, and others that they were making renewals out of revenue?

A. Yes, sir. These notes presented by Mr. Hillman in these two sheets that I have looked over would indicate that many repairs were being made out of current revenue.

THE MASTER: Just exhibit that original record there to the counsel on the other side, so that either now or later they may read into the record anything that is explanatory of the statements that you have read, I want what both of you think is the whole record on this. You need not do it right now. When it is read in, read it at this place.

MR. HOLT: I believe that is all we care to ask Mr. Potter, your Honor.

MR. HARRISON: We do not care to re-examine Mr. Potter.

MR. HOLT: Then that is all with Mr. Potter.

By The Master:

Q. Mr. Potter, have you made any examination of the books of Virginia or any of the accounts for the purpose of ascertaining whether any dividends were paid by the James River and Kanawha Company after January 1, 1861?

A. No, sir.

Q. You have not made any examination?

A. No, sir, I have not.

Q. Then you do not know anything about it?

A. No, sir, I do not.

THE MASTER: Now we have these original documents here, and, unless it is agreed to, the statement of no witness as to what the original documents show will be accepted. If there is no objection made, I have no objection to these witnesses stating what they think the record shows, provided the record is handed to me so that I can see what it shows.

MR. HOLT: What I want to get at with Mr. Hillman is this, all of the extracts that he has in this exhibit come out of the president's report, do they not?

MR. HILLMAN: Some of them from document No. 17, but they are already printed in the record.

MR. HOLT: Then all those that have not heretofore been printed come out of the president's report?

MR. HILLMAN: Yes, sir.

MR. HOLT: In other words, we will get all we want by printing the president's report.

THE MASTER: I suppose it would be competent for West Virginia to ask Mr. Hillman if he had a certain

document, and if the document did or did not contain certain things, and on cross-examination they might go into it. Of course, on objection, I won't allow any witness to put in a statement of what is in the record, as long as I have the original record here. You can pick out what you want and they can pick out what they want, all subject later to the fact that I am to see the whole original myself.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

By the Master:

Q. What is the fact, does the president's report that you are looking over now contain the facts upon which you predicate the statements in your summary, outside of the facts that are already in the record?

A. Yes, sir.

THE MASTER: They may read in such parts of the report as they like, and the other side may read such parts as qualify it, if that is agreeable. Meanwhile, I want the whole report myself to look over, because there may be something that I think ought to go in which does not impress the distinguished counsel as being necessary to put in.

MR. HARRISON: Judge, might you not go on now with the first exhibit, and we can deal with this when we get to it? We might make progress if you can begin with the figures that you want to examine Mr. Hillman about.

THE MASTER: Have you the rule that was referred to in this Blue Ridge Railroad matter?

MR. HOLT: I am going to see if I can ascertain that from Mr. Hillman.

Direct-examination by Mr. Holt:

Q. Mr. Hillman, have you examined Plaintiff's Exhibit No. 26, today filed by Mr. Potter, relative to the Blue Ridge Railroad Company?

A. Yes, sir, I have.

Q. Have you prepared a counter-exhibit embodying your criticisms upon the method adopted by the joint Commissioners of Virginia and West Virginia for the valuation of that Road?

A. Yes, sir, I have.

Q. (Handing paper) Take the paper now handed you and state whether or not it is the counter-exhibit prepared by you.

A. It is.

Q. Are the figures therein used correct?

A. Yes, sir, they are.

Q. Did the Commission appointed by Virginia and West Virginia, as shown by the Exhibit 26 of Mr. Potter, value the Blue Ridge Railroad as of January 1, 1861?

A. No, sir, they did not.

Q. As of what date did they value it?

A. They valued it as of the date of 1870.

Q. Can you explain to the Master the process resorted to by them in arriving at this valuation?

A. Yes, sir, I have figured it out, and it is as follows: the tolls for a certain year, namely, 1869, as shown on Plaintiff's Exhibit No. 26, were taken and divided into the cost of the Road, as shown on the books of the State of Virginia, after deducting from that cost the amount of tolls which the Blue Ridge Road, or its lessees, had turned in; which left the value $1,503,412.53. Paying in that much per annum, a little over $32,000, it would take 43 years to amount to the $1,503,-412.53. Therefore the actuary's table was referred to as to the present value of one dollar, for a payment which would extend and pay principal and interest in 43 years. That amounts, according to the exhibit filed, which exhibit is a copy of a paper or report of this Commission, to 15.3061. The $32,061.40, the tolls for 1869, is then multiplied by 15.3061, and produces the sum of $490,734.99, as the present value of annuity of $32,000. To that sum is then added the amount of tolls for which the lessee was in default, and then certain items of interest which had accrued on those tolls, the total of which makes up the $625,348.08, for which the Road was sold. I have before me one of the actuary tables, which is an extract from the interest and bond tables of the Mutual Life Insurance Company of New York, by William H. C. Bartlett, LL.D., their actuary, dated 1878, which was furnished me by the Chesapeake & Ohio people, and was evidently the one they have used, since by reference to it, on a 6 per cent. basis the 40 year figure would be 15.0463, and the 45 year figure would be 15.4558. Therefore it is evident that the 43 year figure which details happen to be omitted on the paper before me, would coincide with the figure used on Exhibit 26, of 15.3061.

By the Master:

Q. Is that a method of capitalizing the earning power—assuming $32,000 to be the earning power per year, is that a method of capitalizing it?

A. No, sir, not unless you were capitalizing it with a view that the earning power should be not only the interest on the

investment, but at the same time should be sufficient to pay the principal.

Q. That would be capitalizing both the principal and interest?

A. Yes, sir.

Q. Would that be a method of capitalizing the earning power of that amount, would it be a proper method of capitalizing the earning power of $32,000, if you wanted to take care of both principal and interest?

A. If it was assumed, sir, that this amount was the amount which was to take care of both principal and interest.

Q. Well, assuming that this was a total earning power, the $32,000, would that be a proper method of capitalizing the sum that would take care of the principal and interest?

A. No, sir.

Q. How would you capitalize it?

A. I would capitalize it on the basis of its earning power, upon the basis of six per cent per annum, and allow the principal to run indefinitely as an investment.

Q. Then, would that be a proper basis of the sale of property, or ought it not to be capitalized on the basis of taking care of both principal and interest, on the transfer of the title of the property? Here was a case where the transfer of the title of the property was made, and the seller must receive its equivalent in some way.

A. I should not think that he was receiving its equivalent.

Q. Why not?

A. For the reason that in this method he would receive no return upon his investment. He has simply taken and divided——

Q What do you mean by receiving no return on the investment; do you mean the aggregate investment?

A. Yes, sir.

Q. Or, the investment measured by its earning power?

A. The investment measured by its earning power.

Q. That is $32,000 a year, is it not?

A. Yes, sir.

Q. Well, on this basis of capitalization he would not receive the principal?

A. No, sir; he would simply receive his interest.

Q. What would be the sum that would have been reached by these Commissioners if they had taken an earning power of $23,000 a year, instead of $32,000 a year? That is, what principal sum would they have reached on the same basis of calculation, on the basis of $23,000 earning power as compared with $32,000? Would it be 23/32 of $625,000?

A No, sir; it would not. I will figure it out for you. I will use the value of $1,503,000, the same as he has.

Q. Yes, exactly, figure it on the same basis that he has.

A. That runs a little beyond my actuary table—I can give it to you approximately.

Q. You need not stop to do it now, you can make it and put it in later

A. It will only take a moment.

Q. I was simply getting at a hypothetical estimate here I have taken the five years of tolls, and the average is $23,548, and roughly speaking I wanted to see what that would be as compared with the $32,000 on the same theory.

A. About $379,500. Your Honor, I will say that that is somewhat approximate—it will not be far from the value—for the reason that my actuary tables only run for 50 years, and I had to add an estimate for 65 years.

By Mr. Holt:

Q. Do you consider that a proper method of arriving at the actual value of the Blue Ridge Railroad?

A. No, sir.

Q. You may tell the Master at this point whether or not you had ever seen before this computation which is Plaintiff's Exhibit No. 26.

A. No, sir; I had never seen it before.

Q. Where had you gotten the sales price of that Road for your former exhibit, named as about $620,000?

A That is taken from the records of the Company in toto, amounting to $625,348.08, shown on page 27 of the exhibits in this case, which is journal D, internal improvement fund, page 171.

Q. That then was the source of your information upon the subject of sales price, and not this paper that has been exhibited as Plaintiff's Exhibit No. 26?

A. Yes, sir.

By the Master:

Q. You took that item without any knowledge as to how the result was reached.

A. I did; yes, sir.

By Mr. Holt.

Q Will you file this exhibit relative to the Blue Ridge Railroad Company, prepared by you, as a part of your testimony, and mark it Defendant's Supplemental Exhibit No. 1?

A. Yes, sir; I file it so marked.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 1, December 9th, 1914, C. B.

Defendant's Supplemental Exhibit No. 1 is as follows:

State of West Virginia.

Cost of the Blue Ridge Railroad.

Comments on exhibit as given by A. G. Potter, as to value of the Blue Ridge Railroad.

Mr. Potter's exhibit is merely a statement as to how the price for which the Blue Ridge was sold, was arrived at by the Joint Commission, and for which price the road was afterward sold.

The whole transaction was based upon 1869 toll payments, and has little or no relation to the value of the property on January 1, 1861.

It is erroneous for two fatal reasons. First, that it is based upon a date 10 years subsequent to the date contended for, and secondly, because the whole matter is based upon an erroneous method of valuing property, (the actuary process), which unfortunately has been followed in final settlement.

Its fallacy is evidence because of the fact that they treat the return as an annuity, that pays principal as well as in-

terest, when no such construction was ever intended when the road was built by the State of Virginia and leased to the Virginia Central R. R. for its tolls.

Page 19, Volume of C. & O. Reports of 1867-76, shows that they took up the cost of this road on their books as follows, Sept. 30, 1871:

Amount of tolls paid as per last report	$ 271,687.53
Common stock issued for purchase of road & tunnel	2,000,000.00
Total added to cost of road and property of the C. & O. R. R. on account of the acquisition of this Blue Ridge Railroad	$2,271,687.53

which looks a little better than the meager $490,734.99 allowed as its value by the actuary process.

It would seem that the road having cost $1,604,723.23, in 1861, and valued by a railroad at $2,271,687.53 in 1871, would suggest very strongly that it was worth its cost in 1861 and always continued to be.

I certify that all the figures used in the above exhibit have been correctly taken from the original records as noted above.

C. W. HILLMAN,

Accountant for West Virginia.

MR. HOLT: I do not know whether we have any other supplemental exhibits that conflict with that or not.

Q. I note from this exhibit, Mr. Hillman, that you give the figures at which the Chesapeake & Ohio Railroad carried this Road upon its books. Will you state what those figures were?

A. $2,271,687.53.

Q. What do they represent?

A. The amount added to the cost of property by Chesapeake & Ohio Railroad Company upon the acquisition of this Blue Ridge Railroad.

Q. From what record do you take those figures?

A. Page 19, Volume of Chesapeake & Ohio reports, 1867 to 1876, the date being September 30th, 1871. This book is in the room now, having been sent up by the Chesapeake & Ohio Railroad Company officials for our inspection.

Q. Have you correctly transcribed those figures into your exhibit?

A. Yes, sir.

MR. ROBINSON: I have a question or two on that exhibit. Shall I ask them here and let it go right into the record now?

MR. HOLT: I think that will do just as well as any other time.

MR. ROBINSON: I think the Master might like to have it with the others.

By Mr. Robinson:

Q. Mr. Hillman, this reference to which you refer, page 19 of the report as of September 30th, 1871, contains the entry, "For cost of Blue Ridge Railroad and Tunnel by last report." Referring back to page 15 of the report for September 30th, 1870, there is an entry for Blue Ridge Railroad and tunnel, "Tolls to the State for the Blue Ridge Railroad and tunnel, by last report," carried down to a total of $271,687.53. So that your characterization of that item appears to be correct. There is also an entry, total added——

THE MASTER: Over what period were those tolls paid?

MR. ROBINSON: Oh, away back, a number of years.

THE MASTER: I want to know about it.

MR. ROBINSON: That is all the tolls to date.

THE MASTER: Is there anything there that shows what the annual sum received was for tolls?

MR. ROBINSON: The entry as of September 30th, 1870, is as follows, "For Blue Ridge Railroad Company tunnel, tolls to the State for the Blue Ridge Railroad and tunnel, by last report, $247,352.46; tolls and interest in April 1st, 1870, $80,508.24; express charges on bonds and expense of settling with the State, $145; making a total of $328,305.70." Then there is an entry, "Less difference value Virginia registered bonds and interest, $56,618.17," making a total of $271,687.83. In other words, tolls of a face value of $80,508.24 are settled in Virginia bonds, which have a discount of $56,618.17, making a difference of a little less than $24,000 in money paid to discharge the tolls for that year. But the point that I want to bring out here, before we come to these tolls, relates to the entry of capital stock. The entry reads, "For capital stock issued for purchase of road and tunnel, $2,000,000."

Q. I would like to ask you, Mr. Hillman, if you looked into the report to see what consideration the State got for that $2,000,000 of capital stock. You looked up the other item; did you look up this item?

A. The State?

Q. No, the Company.

A. I do not know.

Q. You did not look that up?

A. Oh, no.

Q. Well, I refer to page 10 of the report to the stockholders at their annual meeting, November 25th, 1870, where, under the heading, "Purchase of the Blue Ridge Railroad Company and tunnel," page 10, the report states, "Under the administration of our immediate predecessors arrangements were made for the purchase by this Company of the interest of the State of Virginia in the Blue Ridge Railroad and tunnel. These arrangements have been carried out on the terms and conditions approved by the late Board of Directors in November last, and by you at your last annual meeting. This object has been accomplished by the issue of 20,000 shares of the capital stock of the Company, which have been given in payment for the requisite amount of the bonds of the State of Virginia." Would that indicate to you what the State received for its $2,000,000 of capital stock?

A. Do you mean the State?

Q. What the Company received for its $2,000,000 of capital stock I should have said.

A. It would indicate that they had bought the bonds with it, or exchanged it for bonds.

Q. You say that it would indicate that they had given $2,000,000 of stock for sufficient Virginia bonds with which to purchase the Blue Ridge Railroad?

A. Yes, sir; that would be a proper interpretation, provided that is the proper statement.

MR. HARRISON: That was a report of the president and directors to the stockholders.

THE MASTER: This $625,000 odd was paid in bonds of the State?

MR. ROBINSON: Yes, the $625,000 odd was paid in bonds of the State.

THE MASTER: And the $2,000,000 of capital was issued for the bonds?

MR. ROBINSON: Yes, sir. This is a report of the officers to the stockholders.

Q. Now I refer to page 13 of the history of the Chesapeake and Ohio Railroad Company, dated at Richmond, 1868, found in the same volume, which states in regard to the Blue Ridge Railroad and tunnel as follows: "Blue Ridge Railroad and tunnel at Rock Fish Gap built by the State, costing $1,800,000, by a contract with the Commissioners under the Act of 1867, can be bought for $300,000, adding to the above unencumbered basis $1,500,000 for the value of the Road." Would that entry indicate to you the cash value of the Virginia bonds or the amount which would have to be expended to secure the Virginia bonds to purchase the Blue Ridge Railroad Company?

A. Yes, sir; that would indicate that the amount of these bonds—that these bonds, some $625,000, could have been purchased at about 50 cents on the dollar.

By the Master:

Q. Cash?

A. Yes, sir. It would also indicate to me, from the excerpt read, that the valuation placed upon it by the Road was $1,500,000 more than that, since it added that to their unencumbered value of the road.

Q. Do you mean by that that the report to the stockholders gave them to understand that they were getting a property worth $1,500,000 for $325,000?

A. That is my interpretation of the excerpt that was read to me; yes, sir.

Q. Does that mean property that cost that sum of money?

A. Yes, sir; if you will deduct the $300,000 which these bonds are supposed to cost from the $1,800,000, which they have stated that the tunnel originally cost, it would leave $1,500,000, unencumbered, which they should add to the value of the Road.

Q. Does it mean any more than that they reported to their stockholders that they could buy a property that cost $1,800,000 for $1,300,000?

A. Yes, sir.

Q. That is what it means?

A. It means that, and that therefore they had added to the value of their property $1,500,000.

Q. You would not think that they were conveying to the stockholders the idea that they were making a profit of $1,500,000?

A. That would be my interpretation of it.

Q. Do you really think that the officers were reporting to the stockholders that they could buy a property for $300,000, property that was actually worth $1,800,000?

A. Yes, sir.

MR. HOLT: Is not that what it says?

THE MASTER: I would like to inquire where the State of Virginia was when this transaction was going on. I think the practical situation is obvious enough. Have you anything more from Mr. Hillman, Mr. Robinson?

MR. ROBINSON: That is all.

THE MASTER: Suppose we go on until six o'clock, and then suspend for dinner, and get back at eight o'clock. I will suspend now for about five minutes.

THE MASTER: What about this rule established May 25th, 1867, have we got that rule anywhere?

MR. HOLT: I do not think we have; the only reference I have ever seen to it is in that document there. They evidently met and held some sort of a confernce, and agreed how they should do things, I infer from that statement.

THE WITNESS: I think I can explain that, your Honor, if Judge Holt is willing.

MR. HOLT: Go right along.

THE WITNESS: If you recall, on these large loans that they had, they have always been, we might say, discounted for cash. Those loans consisted of a return which should be paid in of 7 per cent., 6 per cent. to represent interest and 1 per cent. to represent the sinking fund. And evidently the rule of 1867 is the rule by which they determine the present value of those different loans, which you remember were settled for less than their face value frequently, as is shown in our prior exhibits.

THE MASTER: I do not see how that has any necessary connection with this. I do not see any evidence of any discount here; they seem to have taken an arbitrary sum and worked out a theory, but I do not see that they have made any discount for anticipation of payments made in advance.

THE WITNESS: The proposition was that 7 per cent., running a certain number of years, would pay both the principal and interest of the loan, and they

have then applied that rule, which I suppose is the rule of 1867, although I have no evidence on the subject, about this loan.

THE MASTER: Our whole theory of computation is predicated upon a 6 per cent. basis, is it not?

THE WITNESS: Yes, sir.

THE MASTER: So that I do not see how that gives us any explanation, that they had a computation based upon a 7 per cent. basis in 1867, and then ultimately worked it out on a 6 per cent. basis. I do not know as that would be of any value, if we could get it, but I would like to see what they decided to do, and it may give some reasons why they decided to do it. Of course that was away back there, and there were three men representing each State. Is there any way we can get that rule?

MR. ANDERSON: I do not know.

MR. ROBINSON: Judge Holt has pointed out that the rule is arbitrary, and we have not said that it was not.

MR. HOLT: I think that paper shows on its face what they did.

THE MASTER: There is no doubt that it shows what they did; but my idea was that if we could get this rule, they might give some explanation as to how they reached the conclusion. Has anybody made any search for it?

MR. HOLT: I think not.

THE MASTER: No effort has been made to find it. Now what about the tolls, beginning when it first began to pay tolls? Do you know anything about that, Mr. Hillman? What is the first year in which tolls

were begun to be paid, and can you give me the tolls for that year and the succeeding years, up to 1870?

THE WITNESS: Will you let me just think a moment, and see whether amongst my books and papers I have anything.

THE MASTER: Yes, certainly.

THE WITNESS: No, sir; I know that tolls were paid prior to 1861, January 1st, 1861. I remember that fact. How long prior I do not know. The sum total of my absolute knowledge upon that point is shown upon page 27 of Volume 2 of the present record.

THE MASTER: Well, that simply gives——

THE WITNESS: That shows actual payments up to December 31st, 1863, of $79,932.74, and forgiven tolls, at the head of the page, for the same period, of $90,147.62.

THE MASTER: Where is that, forgiven tolls?

THE WITNESS: Right after the cost of construction it says "Amount invested in road after January 1st, 1861, was $90,147,62, all of which was allowed to the Virginia Central Railroad, which was to do the work, as a credit on their toll account, and which amount was in addition to the tolls mentioned below."

THE MASTER: That evidently went into construction .

THE WITNESS: Yes, sir; but it was a toll account which was due, and they were allowed to offset it.

THE MASTER: They were allowed to use it in construction instead of offsetting it as a toll.

THE WITNESS: Yes, sir.

THE MASTER: When did they commence to pay tolls, do you know?

THE WITNESS: I do not know when they commenced.

THE MASTER: Here is a statement which has just been put in as plaintiff's Exhibit No. 26, showing amounts of tolls accrued but not paid, payable at the end of each year; for the year 1865, $8,976.16; for the year 1866, $19,655.33; for the year 1867, $25,471.36; for the year 1868, $31,780.99; for the year 1869, $32,061.40. Do you have any means of determining whether that is a fair statement of the average tolls that were paid in by this Road, or paid for the use of the Road? Would that average $23,548 a year?

MR. HOLT: Will your Honor let me interject something there parenthetically?

THE MASTER: Certainly.

MR. HOLT: Is it not the fact that what was meant by tolls was simply that the railroad was to pay so much to the State for every ton of freight, and so much for every passenger transported? That being true, there would be no regular annual toll agreed upon at all, but it would be one thing one year and another thing the next year, according to the business of the Road. I think that was the situation.

THE MASTER: But in that event it would be the return to the State on its investment. I want it for each year, if we can get it.

By the Master:

Q. Have you any information except what is contained in the schedule that you filed, page 27, and this schedule filed today?

A. No, sir; I have not.

Q. Have you ever made any investigation to ascertain what was paid in tolls during those succession of years?

A. Only from 1861 to the end of 1863, as shown on page 27 of my report, which shows for four years from January 1st, 1861, to December 31st, 1863, the aggregate was $170,080.36.

Q. That is adding the $90,000 to the $79,000?

A. Yes, sir.

By Mr. Harrison:

Q. You refer to your report and what exhibit?

A. My exhibit, Volume 2, page 27, which is an average of $42,520 per annum.

Q. Average of how much?

A. $42,520 per annum.

By Mr. Anderson:

Q. That was during the War?

A. Yes, sir; that was during the War.

By the Master:

Q. And that is all the information you have, that schedule of yours and this schedule just introduced today?

A. Yes, sir.

Q. I suppose those figures are available, are they not?

A. Yes, sir

Q. It is easy enough for somebody to find out just what those tolls were during a period of years?

A. Yes, sir.

THE MASTER: I want to know if the figures are available that show the amount of tolls that were received on account of this investment, from the date when the Road was first opened for traffic up to 1869 or 1870.

THE WITNESS: Yes, sir; they could be determined from the very probable break from this date, I think, in 1863, to where they were taken up in 1865, at the close of the War, and there is a very probable break right in there.

THE MASTER: I would like to have furnished by one side or the other a statement of the annual tolls and of all the annual tolls that were received by Virginia on account of the use of the Blue Ridge Railroad, from the date when it was first opened for traffic up to the time when it was sold to the Chesapeake & Ohio. Who will furnish me with that?

THE WITNESS: I will send Mr. Leeds to Richmond for it, and if Virginia desires they can have one of Mr. Potter's men check it up.

THE MASTER: We have part of it, and I would like to get the whole of it, and I would like to have it made by years.

THE WITNESS: Before I make that statement perhaps I had better ask whether I am authorized to do that.

GOVERNOR HATFIELD: Certainly.

THE WITNESS: And at the same time have one of Mr. Potter's men check it up.

MR. ANDERSON: They have the records of the old Central Railroad, the contract was with the Central Railroad.

THE MASTER: If the contract is in existence I think it should be produced and put in the record, so that both parties may have the benefit of it.

THE WITNESS: Do you wish search made at the same time for that contract, or for the terms of that contract which might exist on a ledger entry?

THE MASTER: Yes, if the contract is in evidence I would like to have the contract; and if there is any statement on the records showing the substance of the contract, I would like to have that statement copied.

THE WITNESS: There is one point I am going to look up, for my own information, which you will pardon me if I report to you, and that is whether that $90,000 there was a forgiven toll prior to 1861 or subsequent to 1861.

THE MASTER: Your statement shows it was subsequent.

THE WITNESS: Yes, sir.

THE MASTER: If you will get the statement I am speaking of it will cover the whole ground. I want you to begin at the time when this road was opened for traffic, then I want the amount that the lessee paid in tolls for the use of that Road for each year. Now when we get that we get the whole thing, so far as the tolls are concerned, and the $90,000 will take care of itself.

THE WITNESS: From the time that the State road was leased to the other road?

THE MASTER: Yes. Or if the State itself operated it and got anything from tolls, I want that. From the time it was opened for traffic I want to get everything that the State received during that period, if I can.

And with that and the contract, we have everything in the case, as far as I can see, that has any legitimate bearing on the value of the property.

By Mr. Holt:

Q. Mr. Hillman, have you prepared an exhibit stating the net earnings applicable to return upon the capital of the James River and Kanawha Company?

A. Yes, sir; I have.

THE MASTER: During what period? Do you mean prior to 1860?

MR. HOLT: I am asking him generally about it.

Q. What period does that exhibit cover?

A. This exhibit which I hold in my hand covers a period of 7 years, from October 1st, 1853, to September 30th, 1860.

THE MASTER: This that I have here says September 30th, 1859.

THE WITNESS: You will find one year entered below there, to avoid the necessity of having two exhibits; and this is the consolidation of the two totals.

THE MASTER: That is all right; I had not run my eye down far enough.

Q. What do you find and state to be the annual earnings of that Company during the period you have mentioned, omitting the year 1860, the average annual income?

A. $109,646.55 for the 6 years ending September 30th, 1859.

Q. For the 6 years?

A. Yes, sir; 6 years.

MR. HARRISON: Does that appear on your exhibit?

THE WITNESS: He wants me to omit——

Q. I will repeat my question. I want to show what is on your exhibit.

A. Will you read the question, please?

Q. What do you find and state to be the annual earnings of that Company during the period you have mentioned, omitting the year 1860, the average annual income? Does your exhibit anywhere show? Look at it. Does it show what the average annual income of the Company was during the period covered by that exhibit?

A. Yes, sir.

Q. What is that amount?

A. $115,554.21.

Q. How do you arrive at that, Mr Hillman?

A. By taking the earnings, the net operating revenue for the period of 6 years, which amount to $657,879.33, and adding thereto the earnings of $151,000.14 for the following year, which makes a period of 7 years, and gives a net operating revenue for the 7 years of $808,879.47, which is an average of $115,554.21.

Q. Have you capitalized that average net income?

A. Yes, sir; I have

Q. What did that give you?

A. On a 6 per cent. basis, $1,925,903.50

Q. Does your exhibit show the net operating revenue of this Company for the year ending September 30th, 1860?

A Yes, sir; it does.

Q. What is that revenue?

A. $151,000.14.

Q. Have you capitalized that?

A. Yes, sir.

Q. What did it produce?

A. $2,516,669.

Q Then a capitalization of the net operating revenue of that Company for the year ending September 30th, 1860, produces $2,516,669?

A. Yes, sir.

Q. How did you arrive at the net operating revenue as stated in that exhibit?

A. For the revenue derived from operation I deducted the operating expenses.

Q. Did you deduct any items or any expenditures on account of construction?

A. Yes, sir.

Q. Would you consider that a part of operating expense?

A. No, sir; I do not.

THE MASTER: Either you are mixed or he is.

MR. HOLT: Yes, one of us is evidently mixed.

Q. I asked you how you obtained the net operating revenue. What was your answer to that?

A. I deducted from the operating revenue the operating expenses, which gave me the net operating revenue.

Q. Well, now, in the figure that was deducted from the other, did you embrace money spent on construction, I asked you?

A. No, sir; I did not.

By the Master:

Q. That is, in that computation you excluded all items that were disbursed for construction?

A. I did; yes, sir.

By Mr. Holt:

Q. Did you take into consideration, or did you exclude, in ascertaining that figure and arriving at that result, moneys paid by the Company on account of interest?

A. I excluded them.

Q. Why would you exclude them, Mr. Hillman?

A. Because moneys paid on account of interest are a return upon investment and not an operating expense.

Q. What is the difference between Mr. Potter's statement and your own exhibit to which your attention is now called, in that respect?

A. The difference is that Mr. Potter has charged interest on investment, or return upon capital, against his revenue account, and included those in amongst his operating expenses.

By the Master:

Q. How would you pay them on your theory, what would you pay them out of, fixed charges?

A. You would have to pay them out of the net revenue.

Q. If the fixed charges were paid, you would not have any net revenue, would you?

A. Yes, sir; you would have a net revenue but no net income.

Q. If the fixed charges were paid would you have any net revenue applicable to the payment of dividends on the stock?

A. No, sir; you would not.

Q. Your result would be just like Mr. Potter's then, in that respect, when you come to get right down to the final analysis?

A. Yes, sir.

Q. As to whether anything was applicable to a dividend upon the capital stock, you would land right where he does?

A. Yes, sir; if the bonded indebtedness was still extant.

Q. Well, it was extant prior to 1860, was it not; and in 1860?

A. Yes, sir; it was.

Q. And the account for 1860 shows over $186,000 paid for interest in 1860?

A. I do not recall the amount.

Q. This James River and Kanawha report or document shows a payment for interest in 1860 of $186,126.89, does it not?

A. Yes, sir.

Q. That is, of disbursement for that purpose?

A. Yes, sir.

Q. And so far as 1860 is concerned, there was evidently a deficit, when you take the operating expenses and the fixed charges and apply the revenue thereto?

A. Yes, sir; there was.

Q. And there was during the preceding 7 years that your computation covers?

A. Yes, sir.

Q. And your figures in that respect, when you make the same kind of an allowance for fixed charges that Mr. Potter did, or if he made the same kind of a computation that you did, substantially agree?

A. Yes, sir.

By Mr. Holt:

Q. Now, Mr. Hillman, Mr. Potter shows a deficit covering a period of 25 years, I think. What occasions that deficit?

A. The payments of interest and dividends, or in other words the payment of return upon capital or upon investment.

Q. Had there been no interest charges, would there have been a deficit during that period?

A. There would not.

Q. When did these interest charges cease?

A. During the fiscal year ending September 30th, 1860.

Q. Had not the bonds and debts that gave rise to these interest charges been taken up, paid or cancelled, and were they not out of existence on the 1st day of January, 1861?

A. They were; yes, sir.

Q. How was that bonded debt taken up?

A. By the issuance of preferred stock to the State of Virginia by the James River and Kanawha Company.

Q. Will you file the paper to which I have called your attention as part of your testimony, and mark it Defendant's Supplemental Exhibit No. 2?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 2, December 9th, 1914, C. B.

DEFENDANT'S SUPPLEMENTAL EXHIBIT No. 2.

State of West Virginia

Statement of the Net Earnings, Applicable to Return Upon the Capital of the James River & Kanawha Company.

Earnings from Operation, Oct. 1, 1853, to Sept. 30, 1859, pages 711-12 of Volume 5, reports of the James River & Kanawha Co. on file in Vice-President's Office of the Chesapeake & Ohio R. R. Co., City of Richmond		$1,751,392.51
Operating expenses, same record as above, same period, as follows:		
Page 712, Richmond Dock	$35,814.43	
" " 5 Locks to tidewater	5,030.44	
" " Canal.....	790,044.78	
" 713 Expenses and Repairs, North River Improvement	2,031.68	
" " Expenses and Repairs, Blue Ridge turnpike and ferry.	5,953.01	
" " Reconstruction items as follows	98,435.75	
Maiden's Adventure dam....$36,393.91		
Grant's dam 30,559.89		
Bosher's dam 28,481.95		
Joshua Fall's Dam 3,000.00		
Page 713 Expenses Kanawha Turnpike.	57,280.02	
" " Kanawha River (1st 3 items).	19,809.07	

Page 714	Kanawha Board Directors	$ 495.00		
	Delegates to meeting	71.00		
	Secy's salary	231.76		
	Rent.	92.30	890.06	
" "	General Administration		78,223.94	
	Total operating expenses for six years. . . .			$1,093,513.18
	Net operating Revenue applicable to return upon Capital stock for the six years. . . .			$ 657,879.36

Earnings from operation Oct. 1, 1859, to Sept. 30, 1860 (as per certified Report of Rosewell Page, Second Auditor of Virginia, and confirmed by A. G. Potter, Accountant for the State of Virginia, in Exhibits filed with the Master, subsequent to the closing of the testimony) $308,894.33

Disbursements (same authority as above—checked) $219,441.57

Of the above disbursements the following were construction items, as will be seen by reference to pages noted of document 17, Board of Public Works State Reports of Va., 1860.

Page 235 of the	$138,099.03	Canal Expenses, there is construction.	$ 5,036.18

Page 235	of the $2,099.43 South Side Expenses, there is construction...	1,559.43		
" "	of the $28,025.55 North Riv. Impvt. there is construction...	26,543.97		
" 266	All of the Kanawha Riv. Impvt. charges are construction...	28,407.80		
	Total Construction included in disbursements		$61,547.38	
	Total operating expenses for the year		$157,894.19	$157,894.19
	Net operating Revenue applicable to capital stock for year ending Sept. 30, 1860.			$151,000.14
	Combining the two above statements we obtain a seven years' total as follows:			
Earnings for seven years to September 30, 1860				2,060,286.84
Operating expenses for seven years to September 30, 1860				1,251,407.37
Net operating Revenue for seven years to September 30, 1860 ..... (Applicable to return on capital stock)				808,879.47

Yearly average for seven years.....	115,554.21
Which capitalized on six per cent. basis equals $1,925,903.50	
The year ending Sept. 30, 1860, shows net operating Revenue of	151,000.14
Which capitalized on six per cent. basis equals. $2,516,669.00	

I hereby certify that the figures in this Schedule were taken by me from the original record as noted above of the James River and Kanawha Company or of the State of Virginia, for the periods mentioned, and that they have been so grouped as to show the true operating expenses as well as the earnings of the said Company.

C. W. HILLMAN,
Accountant for West Virginia.

Q. The operating revenues then of this canal exceeded the operating expenses, excluding interest therefrom?

A. Yes, sir; they did.

Q. What kind of stock did the State get for its debts, or bonds?

A. Preferred stock.

Q. What effect would that legislation and the issue thereon of preferred stock in payment of bonds have upon the value of the stockholdings of Virginia thereafter?

A. It would make them valuable, or give them a degree of value commensurate with the amount of net earnings which would be applicable to return upon that stock, there then being no interest charges which need to be taken into consideration.

MR. ROBINSON: I assume that is a statement by Mr. Hillman of his opinion, and not of a fact.

MR. HARRISON: You are asking for his opinion.

MR. HOLT: Let it go for what it is worth.

Q. (Handing paper) Take the paper now handed you and mark it Defendant's Supplemental Exhibit No. 3, and state where you took the figures therein contained from.

A. I took those figures from Mr. Potter's Exhibit which is now filed in this case and numbered Plaintiff's Exhibit No. 24.

Q. Are the calculations in that exhibit correct, I mean in this Exhibit marked Defendant's Supplemental Exhibit No. 3?

A. Yes, sir; they are correct. I have checked Mr. Potter's figures.

Q. Will you mark it as part of your testimony, marking it as I have indicated?

A. Yes, sir; I file it herewith, marked Defendant's Supplemental Exhibit No. 3.

The paper was admitted in evidencee and marked Defendant's Supplemental Exhibit No. 3, December 9th, 1914, C. B.

DEFENDANT'S SUPPLEMENTAL EXHIBIT No. 3.

State of West Virginia

James River and Kanawha Company. Analysis of Mr. Potter Excerpt from Document 17, Pages 272-3 and 274-5, to Show Revenue, Operating Expenses and Net Operating Revenue from the Inception of the Company, June 27, 1835, to Sept. 30, 1860.

Figures all taken from Mr. Potter's Exhibit filed in this case after close of testimony and therefore not numbered.

Earnings from Operation		$5,434,443.35
Operating expenses:		
Repairs and maintenance of the old Canal Richmond to Maiden's Adventure, Kanawha Road and River, Blue Ridge Canal Road and Ferry	$411,712.97	
Repairs and maintenance of new canal Richmond to Buchanan	1,900,227.64	
Expenses General Administration	177,642.46	
Repairs to Richmond Dock and 5 locks	79,887.51	
State Tax	1,374.77	
Losses	68,444.02	
Total operating expenses and taxes		2,639,289.37
Net operating Revenue applicable to return on capital stock		$2,795,153.98

And not an operating loss of $1,302,995.75 as would be inferred from Mr. Potter's statement, unless report had been properly analyzed and stated. Which loss of $1,302,995.75 if not so analyzed would indicate that the property was valueless as an earning proposition. It will be noted from the above statement of twenty-five years' earnings that the company averaged almost exactly $111,800.00 per year. It would not be proper to reduce this return to capitalization because of the fact that the property was not in full operation until 1859. By full operation we mean as far as it had progressed when stopped by the war.

I hereby certify that the above figures were checked by me and are the correct figures from Mr. Potter's exhibit above mentioned and have been arranged by me to show the true revenue, operating expenses and net revenue of the James River and Kanawha Company for the period mentioned.

C. W. HILLMAN,

Accountant for West Virginia.

By the Master:

Q. This excludes the fixed charges, does it?

A. Yes, sir.

Q. Do you think that that is just exactly the kind of comment you ought to make on Mr. Potter's report, with the knowledge that he takes into account another factor, the comment you have got there? You say, "And not an operating loss of $1,302,995.75, as would be inferred from Mr. Potter's statement, unless report had been properly analyzed and stated. Which loss of $1,302,995.75 if not so analyzed would indicate that the property was valueless as an earning proposition." Now when you come to analyze this report there is

not any difference between you and Mr. Potter at all. You simply ignore an element, which you do not take into account. Do you think that is a proper comment to make upon his statement, when you ignore an item, and a determining item, when you know you ignore it—do you think that is the way you ought to characterize his report?

A. I will admit that is expressed a little strongly, your Honor.

Q. But ought you to do that, when you know that Potter has taken into account an item which it is his duty to take into account, a fixed charge—do you think that is a comment you ought to make upon his report?

A. Yes, sir, if you will allow me an explanation.

Q. Yes, make any explanation you like, if you want to stand by it.

A. At the time that these were filed I did not suppose, nor did we suppose, that there would be any further testimony taken, or any chance for any other explanation than such as we might have by the filing of these contra exhibits, and hence there were comments made on them which would not have been made had we thought there would be further evidence taken.

Q. Even so, you know you made your statement on a basis entirely different from what Mr. Potter made his on, and you knew that Mr. Potter took into account, as he ought to have taken into account, the fixed charges; and with that knowledge, do you think that is the kind of a comment you ought to make on Mr. Potter's report, even though you thought you would not have a chance of explaining it? You could not help knowing it, because you understood the distinction between the two. That is quite a reflection upon Mr. Potter's statement, and I understand you now to state that Mr. Potter's statement is exactly right upon the facts as they existed.

MR. HOLT: Of course, your Honor understands this, that the sole object of our exhibits, contrasting them with Mr. Potter's, is to show that fixed charges, according to our theory, constitute no part of an operating expense. As a matter of fact, however, in the final analysis, of course they have to be paid, just as your Honor suggested a moment ago. And we wanted to emphasize the fact that the deficit that he speaks of took place in that portion of the history of the Company where it had interest charges to meet. While, when we come down to the period at which we seek to value the stock in that Company, 1861, those interest charges no longer exist. And our statement will show what that Company would have done in that period back there had it had no interest charges, as it had none in 1861.

THE MASTER: That all may be; that works out of it, but—I won't go any farther.

THE WITNESS: I would be very much pleased to strike that from this report, if you desire.

THE MASTER: These accountants put in propositions here before me that I suppose they expect me to rely on, and unless they are explained or they are overhauled by cross-examination, they expect me to take them as they leave them. And I think it is up to the accountants on both sides to put these statements in here so that they will hold water and stand analysis and stand criticism. Now nothing is gained by undertaking to present to me an exhibit that I know does not agree with the conditions that existed, and then undertaking to break down another exhibit that is in accordance with the conditions as they existed. There is no objection to calling attention to this fact, of course; I appreciate your position; but I do not like to have an exhibit presented here that, if I undertook to go by it, would be absolutely misleading. There is not a word said in your exhibits about fixed charges,

you have to wait until it is drawn out on cross-examination or supplemental examination. If I took your exhibit as it stands I would capitalize this road on the basis of what you say was its net revenue. Now, there was not any net revenue during that period. I appreciate the argument that you have, but I do not want either side to present to me an exhibit that, on its face, would lead me into a place where I ought not to go, if I did not go any farther into it.

MR. HOLT: Of course our theory is, your Honor, that strictly and technically speaking the fixed charges are no part of operating expenses.

THE MASTER: I do not see how there can be any dispute about that.

MR. HOLT: And Mr. Potter presents an exhibit here covering a certain period, that shows a deficit. Then of course the only effect of our exhibit would be to show that that deficit was brought about in consequence of the payment of interest charges.

THE MASTER: There is not any question about that.

MR. HOLT: But that is the date as of which we desire to ascertain the value of this stock. The property ran along with the same business, but with the interest charges no longer in existence.

THE MASTER: That is an argument that you are entitled to the benefit of, but the difficulty with these exhibits is that on their face they do not present that conclusion, and they do not make any reference whatever to this other consideration. If I take them just as they stand, without explanation, I would be holding that there was a net revenue from this canal during that period, and a net revenue in 1860. Of course there was not any such. This is a criticism that I

have on an exhibit like this, for instance, "Net operating revenue applicable to capital stock for year ending September 30th, 1860, $151,000.14." That is not correct, because there was not any net revenue applicable to that purpose; there was a deficit, and the accounts show it. Of course with the explanation that you give, I understand what you mean by it, but taking the exhibit as it stands, the exhibit is not accurate.

THE WITNESS: It was so thoroughly understood, at least by me ——

THE MASTER: But your exhibit on its face did not give me any thorough understanding. If I had taken this exhibit alone, without any cross-examination or any reference to the original exhibits, where would I have landed with it? I would have held that there was a profit of $150,000. There was another witness who has already testified that there was a profit of $142,000.

MR. HOLT: Is it not plain from this exhibit, though, that in this statement of Mr. Hillman it is just a difference in the two exhibits, the nomenclature, nothing else in the world? He undertakes to state what operating expenses are, and Mr. Potter calls something else operating expenses.

THE MASTER: No, Mr. Potter does not call it operating expenses, he calls it interest charges. The difficulty that I had with it was this—of course with the oral explanation that you give, it cleans up the exhibit all right, but you take the exhibit as it stands, and as far as I am concerned the exhibit would mislead me.

MR. HOLT: I thought that it was apparent from this that we were not considering fixed charges at all, but we were sticking strictly to what we defined to be operating expenses.

THE MASTER: The explanation clears it up.

MR. HOLT: We felt that here was a canal, with a great bonded indebtedness, the interest upon which was eating up its income, we will say; but, could it get rid of that, it would have a net income, as shown by its past experience, which would make its stock valuable. Then we come right along and show that this canal company would produce that result, and we follow it right up by showing that it then eventually got rid of the interest charges, and therefore the stock must be profitable thereafter; because, on the 1st of January, 1861, you had the same canal, the same business, practically the same or a greater income, increasing all the time, as shown by this very record, with the interest charges gotten rid of.

THE MASTER: Now suppose you run it right down to the time of sale, and see what happened then.

MR. ANDERSON: You have not gone into that, have you?

MR. HOLT: This exhibit of Mr. Page shows that.

MR. ROBINSON: We filed the exhibits for 1863, and so on, showing that the deficit existed.

MR. HOLT: We are utilizing this simply for the purpose of showing what the value of that stock would be on January 1st, 1861, with interest charges gotten rid of, which were excluded or done away with by this Act of March 23rd, 1860.

MR. ANDERSON: You do not now propose to prove anything as to the effect upon the business of the Company after 1861?

MR. HOLT: No, we are not going beyond January 1st, 1861, with this, because it is all here in this exhibit of Mr. Page, the whole thing.

THE MASTER: You have got more than that in your record.

THE WITNESS: Your Honor, perhaps I should explain, that to me the fact of a net operating revenue conveys such a distinct impression as to what it is, that it does not include interest charges, that perhaps I did not make it as plain as I should on these exhibits.

THE MASTER: The fault may be mine, because I may not be sufficiently familiar with the way in which these things were expressed.

MR. HOLT: That exhibit, to my mind, plainly excludes interest, as Hillman's Exhibit stands, and there is nothing deceptive about it at all.

MR. HARRISON: Well, Judge, is it not misleading in this, as it stands; you say there is $151,000.14 applicable to capital stock for the year ending September 30th, 1860; that could not be so applicable as long as interest charges remained unpaid, they having a primary right to be paid out of the operating revenue before there could be anything applicable to capital stock.

THE MASTER: I do not think we need to spend any more time on this phase of it. Perhaps I am overfussy. I understand the situation, and the oral explanation explains the situation so that I understand perfectly the circumstances under which the exhibit was made, and the idea that Mr. Hillman had in his mind when he made it. You have in here, Judge Holt, an exhibit No. 7,—1863—F, pages 207 to 220, which shows the accumulation of additional indebtedness of nearly $2,000,000. in this James River and Kanawha Company.

MR. HOLT: When did that take place?

THE MASTER: Some of this indebtedness was issued in 1856, some in 1857, some in 1870, some in 1877, some in 1880, some in 1878, some in 1879, and some all the way along there.

MR. HOLT: I think you will find this to be true, Mr. Littlefield, that the bonded indebtedness on January 1st, 1861, and the interest thereon that had been created in the one case and had accrued in the other prior to that date, were all gotten rid of under the Act of March 23rd, 1860.

THE MASTER: There is not any doubt about that.

MR. HOLT: And that as of the date March 1st, 1861, there was nothing of the kind in existence, unless perhaps it was some little interest that had accumulated before the Act of March 23rd, 1860, that remained yet unpaid. That may have been true.

THE MASTER: Now, your case shows the extinguishing of this debt in 1861 or in 1860.

MR. HOLT: March 23rd, 1860.

THE MASTER: Well, the next thing that you show is that up to the time of its sale to the Richmond and Allegheny its operation had resulted in accumulating an indebtedness of about $2,000,000, and your case does not show now the payment of any dividends, nor does it show any net income after 1860. They put in in 1861, 1862 and 1863—I want to call your attention to the condition of the record so that you will know exactly where this is—unless I am mistaken about it, and of course if I am I want to have my attention called to it, the debt to Virginia was extinguished some time in 1860. Now presumptively the earnings perhaps may have continued. Now, the other side have put in figures from 1861, 1862 and 1863, showing the deficit

in those three years. You have put in an exhibit showing that from 1861, when this indebtedness to the State was extinguished, or from 1860, up to 1880, that the operations of this canal resulted in accumulating a further indebtedness of nearly $2,000,000., and it does not show any dividends during that period, and it does not show any net earnings during that period. Now, that is what the record shows, if I have got it right.

MR. HOLT: Well, there is a period of time there, we will say on January 1st, 1861, we have shown by this exhibit, that in the absence of, or relieved from, interest charges, what this property was doing. It was then producing an annual net income of $151,000. a year. Then came the Act of March 23rd, 1860, which eliminated the interest charges, through the settlement of the debt, and this exhibit of Mr. Page shows that up until, and even after, January 1st, 1861, not only the old business, that produced $151,000 net income, leaving interest charges out, kept up, but actually increased in volume. Now, you will see here in some portion of this exhibit that the articles that they were carrying multiplied very rapidly——

MR. HARRISON: Do you mean Mr. Page's exhibit in the figures shows an increase in the business?

MR. HOLT: Yes, it shows the sacks of coffee that were hauled at one time——

THE MASTER: Why is it not reflected in the receipts?

MR. HOLT: After you pass March 1st, 1861, and come down to April, 1861, or whatever it was, when the War broke out, then the volume of its business became nil, it all went to pot then. But if we are right in the date of our valuation, as of January 1st, 1861, we are not interested in the effect of the War upon the

business of this canal. Let me state once more. We have exhibits here showing that in the year 1860 there would have been a net income of $151,000.14, with the volume of business it was then doing, had it at that time been relieved from the payment of interest charges. The exhibit of Mr. Page shows that that volume of business did not only keep up, that produced $151,000. a year, until, but even after, January 1st, 1861; and the Act of the Legislature shows that on March 23rd, 1860, we were relieved from the interest charges. So that even if its volume of business had kept up to just what it had been when it produced $151,000., why, we would have had a net income of $151,000. after the interest charges had been eliminated, and that would reflect some value upon the stock. But he shows that the business increased until and after January 1st, 1861.

THE MASTER: You mean this James River and Kanawha Company document?

MR. HOLT: Yes, sir. In other words we had the business there that, for the year ending the 30th of September, 1860, eliminating interest charges, produced a net income of $151,000.; which, capitalized at 6 per cent., would give a value to that property of between $2,000,000. and $3,000,000., $2,500,000. odd. The only trouble there was that we had no net income, because we had to destroy it by the payment of interest charges, but we kept along with the same business up to January 1st, 1861, with the elimination of interest charges, therefore it would be fair to assume that after the elimination of the interest charges the income would be $151,000. a year.

THE MASTER: What do you say about the property being operated at a loss of $2,000,000., and upon the sale the State receiving nothing for its stock?

MR. HOLT: This is from Mr. Page's exhibit. Take the item of coal alone; now in 1855——

THE MASTER: What page is that, Judge?

MR. HOLT: That is page 1110-A of Volume 3. Take by way of illustration the first item of coal; they transported 13,000 tons in the year ending September 30th, 1855. When you come over to September 30th, 1860, it is 29,897 tons. Then take coffee; in 1855, 5,000 bags, in round numbers; and in 1860, 24,000 bags, in round numbers. When you get down to the question of lumber, in 1855 you have nearly 5,000,000 feet, and in 1860 you have nearly 26,000,000 feet. And this business was growing right straight along up there until it was destroyed by the War. It went all to pieces almost immediately after April, 1861; but it had not done that on January 1st, 1861. So that if it would produce a net income of $151,000. in 1860, down to September 30th, it was still doing that well, or better, upon an increased business, on January 1st, 1861, and it was in reality at that time net income, because the only thing that had kept it from being net income before, namely, interest, had been by the Act of March 21st, 1861, eliminated. Now it ran into trouble again of course later on, as your Honor suggests. But that occurred during the War, and after the date upon which we rely. We are trying to ascertain, according to our theory—of course we know the theory of the other side, your Honor—the value of this property as of January 1st, 1861. Well, it did not have any $2,000,000 indebtedness at that time, it was a $2,000,000 indebtedness that was incurred long after that time. It was in pretty fair shape on January 1st, 1861, a large business and no interest charges, and an increasing volume of business.

MR. HARRISON: Did they not have an impaired capital on January 1st, 1861?

MR. HOLT: I think not. The truth of the business is that Virginia—her stock was all preferred stock, we will say, on January 1st, 1861, and the common stock may not have been worth anything at all, but her preferred stock, with that state of business, and with the capacity to make a net income of $150,000. a year, when rid of interest, would make her preferred stock worth a good deal, because that preferred stock would consume everything that was earned, the common stock got nothing.

MR. ROBINSON: Judge, if you will turn to page 1211 of Volume 3 you will see that the Company paid interest of about $23,000. for the year, and in 1863 it got up to $65,000.

MR. HOLT: The explanation of that is this, if I understand it, that at the time that this thing was refinanced, that is by the Act of March 23rd, 1860, some old unpaid interest charges were still hanging over, that were paid afterwards. Anyhow, in argument we will undertake to explain our position on that.

MR. HARRISON: Right there, I do not know what you rely on for that statement that there was some interest unpaid.

MR. HOLT: The interest was practically eliminated.

THE MASTER: Instead of the State holding a debt upon which they tried to get their interest, they took stock upon which they hoped to get a dividend.

MR. HOLT: They took stock in a property which, in the absence of interest, could earn a net income.

MR. ROBINSON: If it had been a different company it might have been otherwise.

MR. HOLT: That was another reason for filing out counter-exhibits. We get out of our exhibit—and that was the sole idea, we did not want to use any exhibit that would be deceitful or misleading to the Court—but he had not shown in his exhibit what the property would do with interest eliminated, and we undertook to present an exhibit to show what it would do with interest eliminated; because interest, at the time that we tried to fix the value, had been eliminated.

THE MASTER: Perhaps this is a good place to stop. What do you say to adjourning for dinner and coming back at eight o'clock?

MR. ROBINSON: It suits me.

MR. HOLT: I would rather not go on tonight. Now, I subscribe to the criticism of Mr. Harrison upon this little commentary at the end here, I mean from the standpoint of the law of evidence, and I think we will probably offer the president's report in lieu of that. Then I will be through with Mr. Hillman. I am going to put these papers in, and turn these gentlemen loose to cross-examine him if they want to.

THE MASTER: Whether we shall go on this evening I will leave to the counsel on both sides; I am ready to come here and go on. But of course I do not want to oblige Judge Holt to come here tonight if he does not care to.

MR. ANDERSON: I would like to see the case finished tomorrow, and I do not think we can finish tomorrow unless we sit tonight.

MR. ROBINSON: I cannot be here tomorrow. We think we will finish in an hour, and we take two days.

MR. HOLT: So far I am concerned I am only going to ask him a couple of questions, just to put these papers before the Master, and then give you an opportu-

nity to cross-examine. That is about all I want to do. They speak for themselves, if they get properly in here once.

THE MASTER: Well, what do you say, Mr. Harrison and Judge Holt? I would like to have you agree as to what we shall do this evening.

MR. HOGG: I would rather come in in the morning myself, but I am willing to do whatever the other counsel want to do.

MR. HOLT: I do not believe anyhow that we will get through tomorrow, that is if we undertake to discuss some of these questions here, your additional testimony on market quotations and so on. I think we will probably be here longer than tomorrow.

THE MASTER: I think that the counsel ought to get through with Mr. Hillman, so as to let Mr. Hillman go. Mr. Hillman is attending these sessions under a good deal of personal strain, and I do not think you ought to keep him here after tomorrow anyway. If you can get through with Mr. Hillman tomorrow forenoon that may do, and if you are not sure of getting through with him by tomorrow afternoon you ought to come back here and examine him tonight.

MR. HOLT: We will guarantee to be through with Mr. Hillman in the morning in ten minutes. The matter that you read from this exhibit a moment ago, Mr. Harrison, which was made up of extracts, if we could strike from it the paragraphs you commented upon, we could perhaps get what we want without lumbering the record with the whole report.

MR. HARRISON: Suppose we leave that then until the morning, and deal with that then; but on the first two exhibits that you have examined him about, let us cross-examine him now.

Cross-examination by Mr. Robinson:

Q. Mr. Hillman, if you will refer to your Supplemental Exhibit No. 2, Volume 5 of the reports of the James River and Kanawha Company, extract from pages 712, 713 and 714, and looking at page 714 of that record, I will ask you if you have included in your report an item of the expenses of the committee for negotiating a loan, amounting to $950.

A. No, sir, I have not.

THE MASTER: Let me look at it so that I can get the significance of it as I go along.

MR. ROBINSON: This is a statement of the expenses of the Committee. He says he has omitted that item.

Q. There is another entry, annuity to stockholders of the old James River Company, $21,000. Did you include that item?

A. Certainly not. Are you going to ask me any other questions concerning that $950.?

Q. No.

A. Then if you will allow me to state that that Kanawha Board is a construction board entirely, as will be shown by the Act creating that Board and by this president's report which is quoted here, and is entirely a construction Board, and quite properly I would have been authorized in dropping all of those expenses. I took those, however, which might be considered as an operating expense; but when it came to the expenses of negotiating a loan, I cut it out, as a capital charge.

Q. Do you mean to say that that is a capital charge?

A. Yes, sir, the Kanawha Board is a construction board, it is not the management of the Kanawha Company at all.

Q. Would not this be a fair charge to construction if the Company cared to do it that way?

A. No, sir. The only receipts that the Company had were the $40,000. from the State which they were to apply to the Kanawha Board's expenses, and they were a construction board.

By the Master:

Q. How did you happen to omit the $21,000. annuity? Is not that an annual charge?

A. No, sir, it is not an operating charge, sir.

Q. Is it not a charge that should be deducted from your net sum applicable to the stock?

A. No, sir.

Q. Where do you pay it, where do you get it out of?

A. You understand, you Honor, according to our view of the matter, the capital charges for bonds and annuities had all been wiped out, and we are showing the net result when annuities have been disposed of and when interest charges have been disposed of.

Q. Was this annuity capitalized?

A. Yes, sir; that shows $350,000., capitalized.

THE MASTER: It is subject to the same argument as the capitalization is.

MR. HARRISON: Is not this a statement for seven years?

THE MASTER: That they have explained.

By Mr. Robinson:

Q. Then there are a collection of items under the head of interest on debts to the State, amounting to $137,203,23. Have you included them?

A. No, sir, that was interest on debt, and is not included.

Q. Then there are a collection of items under the heading interest on debt guaranteed by the State, amounting to $746,460.90. Have you included those items?

A. No, sir.

Q. And then there are further items under the heading of interest, exchange and discount, amounting to $80,223.22. Have you included those items?

A. No, sir, they are not included.

Q. Will you please state the total of those times?

A. $985,837.35, subject to verification.

Q. If you had added this amount, $985,837.35, to the other expenses of the Company during those years, would you have had any balance applicable to the payment of dividends?

A. No, sir, there would have been a deficit of $327,958.02.

Q. As a matter of fact, on the actual transactions of the Company was there not that deficit of $327,958.02 for those years?

A. Including the fixed charges, yes, sir.

Q. You do not contend that the payment of dividends comes ahead of fixed charges, do you?

A. No, sir.

MR. ROBINSON: That is all. The other items have all been brought out. They are in Document No. 17.

THE MASTER: Then we will stand adjourned until ten o'clock tomorrow morning?

MR. HOLT: Yes, sir. I would like to ask Mr. Potter a question before we adjourn.

ARTHUR G. POTTER, recalled for further cross-examination, testified as follows:

By Mr. Holt:

Q. Mr. Potter, you showed a deficit, I believe, in this Canal Company's business for the year ending September 30th, 1863?

A. No, sir, the statement that I prepared and certified covered the operations of the Company from the organization to September 30th, 1861.

Q. Well, didn't you give us the actual operations for 1861, 1862 and 1863 also?

A. The cash operations, receipts and disbursements.

Q. Well, did you not show a deficit for the year ending September 30th, 1863?

A. I did, with this qualification, that if any of the times charged among the disbursements were capital expenditures they would reduce the deficit that I indicated by that amount.

Q. I am not trying to confuse or take advantage, I am trying to get the fact. What did that conditional deficit amount to?

A. For 1863?

Q. Yes.

A. $129,036.25.

Q. Is that expressed in Confederate currency?

A. Well, yes, I presume it is.

Q. If that were reduced, by the table that you have heretofore used, to real money, what would it amount to ? Will you make that calculation for tomorrow morning, please?

A. Yes, sir.

Q. Now, coming to the year ending September 30th, 1862, what was the conditional deficit in amount there?

A. $46,609.86.

Q. Will you reduce that to real money?

A. I will.

Q. And the same way with respect to the deficit for the year ending September 30th, 1861?

A. Yes, sir.

Adjourned to December 10th, 1914, at 10 A. M.

New York, December 10th, 1914.

Met pursuant to adjournment.

PRESENT:

Hon. William A. Anderson,

Hon. Randolph Harrison,

Sanford Robinson, Esq.,

Of counsel for plaintiff.

Hon. A. A. Lilly, Attorney General,

Hon. Charles E. Hogg,

Hon. John H. Holt,

of counsel for defendant.

CONWAY W. HILLMAN, recalled for further direct-examination, testified as follows:

By Mr. Holt:

Q. (Handing paper) Take the paper now handed you and marked Defendant's Supplemental Exhibit No. 4, and state who made it, prepared it.

A. I prepared that paper, sir.

Q. Of what does it consist?

A. It consists of excerpts from the report of the James River and Kanawha Canal Company to its stockholders, by their president, for the year ending September 30th, 1860.

By the Master:

Q. Is this the document I have just been looking at?

A. Yes, sir.

Q. That is a letter from the president to this des Minieres, the Frenchman, is that it?

A. I beg your pardon, your Honor.

Q. Identify it so that I will know what you are talking about.

A. The excerpts that I have been talking about are from Document 17 of the Public Works Department.

Q. Are they from the same document that contains this reference to the opinion of the president?

A. That is one of them.

MR. HOLT: There is more than one document quoted from.

Q. Well, give us the next one.

A. The next is Volume 5 of the reports of the James River and Kanawha Company.

Q. What is that one, is that one that contains the reference to the president's opinion?

A. As to the value of property, yes, sir.

Q. That is the one I have just been looking at?

A. Yes, sir.

By Mr. Holt:

Q. What documents are those extracts taken from? Detailed documents. What original documents?

A. From Department of Public Works, Document No. 17, State of West Virginia, September 30th, 1860, and——

By the Master:

Q. Now, right there, is that the document that is already in print?

A. Yes, sir, it is.

Q. Now, go on.

A. And the president's report of the James River and Kanawha Company, Volume No. 5, pages 661 to 692.

By Mr. Holt:

Q. Volume of what, do you mean?

A. Volume of reports of the president of the James River and Kanawha Company.

By the Master:

Q. Now, let me have that book that you are referring to.

A. It is right there at your hand, sir.

By Mr. Holt:

Q. I will ask you this question, Mr. Hillman, whether or not these extracts that make up this exhibit give—whether

or not the exhibit gives the document and the pages from which they are taken.

A. Yes, sir, it does.

THE MASTER: You see, the exhibit itself, your Honor, shows exactly where the extracts come from; in other words, it identifies the original sources.

THE MASTER: And I will identify it right here now.

By the Master:

Q. This document that you refer to containing the statement of the president is what purports to be a letter from the president to Mr. Ernest de Bellot des Minieres, dated November 21st, 1859, is that it?

A. I believe it is, yes, sir.

MR. HOLT: Look at it and see, Mr. Hillman; there is no necessity for saying what you believe.

Q. See if that is the letter of the president to Mr. des Minieres, if that is what you mean.

THE MASTER: I want to suggest now, while he is looking for this, that there is a lot that has gone into this record here that does not need to be printed. I shall not have time to submit this to the counsel on either side, and I am going to take the responsibility of censoring this transcript myself.

THE WITNESS: It is a letter from Mr. des Minieres, included in his general report to the stockholders.

By Mr. Holt:

Q. Are the extracts that make up that exhibit correctly copied from the documents of original sources?

A. Yes, sir, they are.

Q. Will you take the one that is before the Master and is intended to be filed as an exhibit in the cause, and strike from it the paragraphs that you have stricken from this, so that they will tally.

A. Yes, sir, I will.

MR. HOLT: We offer this exhibit, your Honor.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 4, December 10th, 1914. C. B.

DEFENDANT'S SUPPLEMENTAL EXHIBIT NO. 4.
STATE OF WEST VIRGINIA.

STATEMENT AND EXCERPTS FROM VARIOUS DOCUMENTS, AS NOTED, SHOWING THAT PROPERTY WAS KEPT UP TO FAIR OPERATING STANDARD THROUGH CHARGES TO OPERATING EXPENSE AND THAT THEREFORE NO DEPRECIATION SHOULD BE CONSIDERED IN THE ULTIMATE VALUATION OF THIS PROPERTY.

My statement of the earnings and operating expenses for the years 1853-60 shows a charge to operating expenses for reconstruction items, which are certainly a renewal of property offsetting depreciation and amount to $98,435.75 in the five years 1853-59. In addition to these special items please note the following excerpts from the annual reports of the company and from their report to the State of Virginia as evidenced in Document 17, 1860.

Page 225, Document 17, Sept. 30, 1860. Resolutions of investigating committee of stockholders. "That they congratulate the stockholders on the improved and apparently improving condition of the Company in every department of its affairs."

Page 232, Document 17, Sept. 30, 1860. Extract from President's report. "And in the month of July, the water was withdrawn from some of the levels for the usual systematic repairs."

Page 232, Document 17, Sept. 30, 1860. The President speaking of the deposits brought down by the Tye and other rivers says that "This renders the constant employment of dredging machines more or less necessary. The present condition of the canal as far as it affects navigation is very good."

Page 249, Document 17. Extract from the report of superintendent of Second Division and North River Improvements. "The condition of the Canal at the present time is perhaps as good as it has been at any time heretofore since its construction, especially when taken as a whole. The embankment in many places has been strengthened and riprapped, all the stone dams have been filled in behind with stone; a large number of new lock gates have been constructed and put in during the year, and, but for the sand bars which have been accumulating at the mouth of streams emptying into the different pools ever since the dams were built, I should be able to say that the second division was in much better condition than it ever has been heretofore. No breach having occurred in this division during the year, shows conclusively that the banks are becoming more and more permanent every year."

Page 691, Volume 5. Reports of James River and Kanawha Company. Extract from letter of the President. "If ever there has been a stretch of authority, it has been toward the great end and design of the charter, the vigorous prosecution, early completion, and permanent maintenance and good order of the improvement."

On page 692 of the same Volume the President of the J. R. and K. Co. values the property at $10,000,000.00, which was in the year 1859.

On page 225, Document 17, 1860, the President reports as follows: "While the great measure of converting the debt into stock, granted by the legislature last winter, has relieved the Company from a load of oppressive embarrassment." The above is quoted to show what the records of the Company also show, that at this time all the debt had been returned and only the stock was left to be dealt with and that, therefore, all net returns of the Company were applicable to the stock and no deduction was necessary for interest on funded debt. Nor should it be overlooked the fact which is shown in the record of this case that $7,400,000.00 of the stock held by the State was preferred stock.

In addition to the above investigation I have investigated the amount charged to construction on Mr. Potter's exhibit above referred to of $9,482,484.46 and found the amount to be correct, and also that the entire amount was spent in construction, right of way, land damages, and nothing whatever charged against the cost of the property on account of its franchise. This statement made with reference to questions along this line asked by the Master.

We find from the records of the James River and Kanawha Co. on file in the C. & O. Rwy. Offices as above that there was outstanding capital stock of $11,331,330.71, of which the State of Virginia owned $10,400,000.00 or 91.77%. Applying these figures to the valuation shown on prior exhibits made by me and transmitted herewith, we have the following, for the value of $1,925,903.50 for the whole stock of the J. R. & K. Co., which is shown on the seven years earning basis, capitalized

at six per cent., the value of the State's holdings to be $1,767,-401.64. Applying 23.5% to this would entitle West Virginia to $415,339.39. On the basis of the last year, previous to a period January 1, 1861, the capitalization value on the six per cent. basis equals $2,516,669.00. 91.77% of this equals the Virginia proportion is $2,309,547.14, of which West Virginia is entitled to 23.5% or $542,743.58.

I hereby certify that the figures in the above statement were taken by me from the original records as noted.

C. W. HILLMAN,
Accountant for West Virginia.

MR. HOLT: We now offer in evidence a letter dated Richmond, Virginia, November 21st, 1859, addressed to Mr. Ernest de Bellot des Minieres, and signed by Thomas H. Ellis, president, that is found beginning at page 661 and extending to page 694, inclusive, of Volume 5, reports James River and Kanawha Company, 1855-1860.

The letter was admitted in evidence and is considered as Defendant Supplemental Exhibit No. 5.

Defendant's Supplemental Exhibit No. 5 is as follows:

OFFICE JAMES RIVER AND KANAWHA CO.

Richmond, Va., Nov. 21, 1859.

MY DEAR SIR,

At the twenty-fifth annual meeting of the company, which was held at their office in Richmond on the 24th of October last, the board of directors informed the stockholders of the offers which were made by yourself and your associates, some time since, for the completion of the James River and Kanawha canal. The subject was referred to a committee for consideration, and the committee afterwards reported a resolution, which was unanimously adopted, in these words, to wit:

"RESOLVED, That the president be requested to continue his correspondence with Mr. E. de Bellot des Minieres, with a view to the negotiation of an arrangement for the completion of the James River and Kanawha canal, upon terms satisfactory to the board of directors, subject to the approval of the general assembly."

It affords me pleasure to comply with this request of the stockholders.

In doing so, I shall pursue generally the order of topics, suggested by the letter which you did me the honor to address to me in March last, and will furnish you, as far as I can, in a condensed form, the information you then desired.

A history of the James River and Kanawha Company would undoubtedly be both instructive and interesting—and, to some extent, is obviously appropriate to such a negotiation as that you have proposed to us—but within the brief time, at my dis-

posal, previous to the meeting of the legislature, surrounded as I am daily by urgent official duties, it would be impracticable for me to collect, and perhaps tedious to relate, all the facts and events which otherwise I would be gratified to lay before you. I shall therefore, by way of narration, only attempt to show that the projected line of the James River and Kanawha improvement, constituting the central water-line through Virginia, has long been regarded with interest by some of the most eminent men of our state, and that it promises, when completed, as grand and brilliant results as perhaps ever followed the construction of any improvement whatever.

It should be promised that the construction of canals, for transportation, is of comparatively modern date in those countries with which Virginia has been most in communication. The first important canal constructed in France was that of Briare, begun in 1605, during the reign of Henry IV, and completed in 1642. The first considerable work of this kind in England was the Sankey canal, for which an act of parliament was passed in 1755. The Duke of Bridgewater commenced the execution of his project in 1758. In 1765, the general assembly of Virginia passed an act for improving the navigation of James River, from Westham downwards through the great falls, and the north branch of James River (now called the Rivanna), from the mouth thereof upwards, and authorized the trustees to contract for the cutting of such canals, and the building and placing such locks therein, as they might think proper, in the execution of those purposes. This is the act to which Mr. Jefferson (the third president of the United States) refers, when asking himself the question, "Whether his country was the better for his having lived at all?" "The Rivanna," he writes, "had never been used for navifiation; scarcely an empty canoe had ever passed down it. Soon after I came of age, I examined its obstructions, set on foot a subscription for removing them, got an act of assembly passed, and the thing effected, so as to be used completely and fully for carrying down all our produce."

The idea of a communication by a public highway, between the valley of the Ohio River and the valley of the James River, we may suppose to have originated with Governor Spotswood, when, on the 20th of August, 1716, he sat out from Williamsburg on his expedition over the Apalachian mountains, as he called them, but which we call the Blue Ridge. Previously, these mountains had been considered an impenetrable barrier to the progress and enterprise of the whites. It was he who, accompanied by his troop of rangers (men appointed for the defense of the frontiers), a few friendly Indians, and some of the gentlemen of the colony, effected the first passage over them, on horseback; in commemmoration of which event, he received from his king the honor of knighthood.

The first suggestion, however, of a through line, which I have seen, is contained in a letter of the Rev. James Maury (a nephew of John Fontaine, who accompanied Governor Spotswood in his trans-montaine expedition), dated Louisa county, Fredericksville parish, January 10, 1756. He is writing to one of his uncles of a map, and pamphlet explanatory of the same, published by Lewis Evans of Philadelphia, and says:

"Though both it and the pamphlet be liable to several exceptions, and I believe just ones, yet both are very useful in the main, and together, give an attentive peruser a clear idea of the value of the now contested lands and waters to either of the two competitor princes, together with a proof amounting to more than probability, that he of the two who shall remain master of Ohio and the lakes at the end of the dispute, must, in the course of a few years, without an interposal of Providence to prevent it, become sole and absolute lord of North America; to which I will farther add, as my own private opinion, that the same will one day or other render either Hudson's River at New York, or Potomac River in Virginia, the grand emporium of all East Indian commodities! Marvel not at this, however surprising it may seem; perhaps, before I have done with you, you will believe it to be not entirely chimera.

"When it is considered how far the eastern branches of that immense river, Mississippi, extend eastward, and how near they come to the navigable, or rather canoeable parts of the rivers which empty themselves into the sea that washes our shores to the east, it seems highly probable that its western branches reach as far the other way, and make as near approaches to rivers emptying themselves into the ocean to the west of us, the Pacific Ocean, across which a short and easy communication, short in comparison with the present route thither, opens itself to the navigator from that shore of the continent unto the Eastern Indies."

The "dispute" above referred to, was that known in Virginia as the "Seven years' war," or the "French and Indian war," commencing with the seizure of the post occupied by the Ohio company, at the fork of the Ohio River, and the erection there of Fort Duquesne, by Captain Contrecoeur, in the spring of 1754; which brings me to speak of one of the earliest and most illustrious friends, if not the real projector, of the James River improvement.

As early as 1748, George Washington, then just entering his seventeenth year, had been employed by Thomas, the sixth Lord Fairfax, to survey and divide portions of his land on the south branch of the Potomac River; which service brought him first into acquaintance with the region of the Alleghany mountains. The following year he was appointed a public surveyor, the duties of which office he performed for three years, and which again carried him into the same wild region.

In 1753, the governor of Virginia, Robert Dinwiddie, received information of a body of French forces being assembled in a hostile manner on the Ohio River. With the advice of the counsel, he selected and appointed Washington as an express messenger, to bear a letter to the commandant of the French forces, instructing him at the same time as to the nature of the enquiries and observations he was to make on his journey.

This expedition is an exceedingly interesting event in the life of Washington. It was accomplished amid sufferings and perils that required the constant exercise of extraordinary resolution, fortitude and endurance.

Leaving Williamsburg on the last day of October, he returned on the 16th day of the ensuing January, and delivered the letter which he had brought from the French commandant to the governor, and with it a manuscript journal of his travels.

It is said, that Washington on this occasion, in his interview with the governor and council, urged the importance, as well for commercial as for military purposes, of a connection between the east and the west. Be this as it may, it is known that he cherished such a scheme the balance of his life. In 1770, 1772 and 1774, he made tours of examination, with the view to supply himself with facts which would enable him to show the feasibility, expense and advantages of the connection. In a letter to Mr. Jefferson, dated the 29th, March, 1784, he informs him that more than ten years previously he had been struck with the importance of a communication between the waters of the Ohio and Potomac; that he became the principal mover of a bill in the general assembly, of which body he was then a member, to empower a number of subscribers to undertake, at their own expense, the extension of the navigation of the Potomac from tide water to Wills' creek, a distance of about one hundred and fifty miles, with a portage between it and the streams capable of improvement which run into the Ohio; that his plan comprehended a similar improvement and connection for the James River, and that it was in a tolerably good train, when he set out for Cambridge in 1775, to take the command of the army. The war afterwards, he writes, naturally called men's attention to different objects, and all the money they could raise was applied to other purposes.

General Washington resigned his commission as commander-in-chief, in December, 1783. At that time, he supposed that he was taking his "leave of all the employments of public life." Three months afterwards, we find him turning to his cherished project, and writing to Mr. Jefferson, "with you I am satisfied that not a moment ought to be lost in recommencing this business;" and then intimates that he could not determine how far, upon mature consideration, he might depart from the resolution he had formed, of living perfectly at his ease, exempt from every kind of responsibility. "The trouble," he continues, "if my situation at the time would permit me to engage in a work of this sort, would be set at nought, and the immense advantages which this country would derive from the measure, would be no small stimulous to the undertaking, if that undertaking could be made to comport with those ideas, and that line of conduct, with which I meant to glide gently down the current of life."

On the first day of September following, he left Mount Vernon on another tour to the west. The intention which mainly prompted this journey was to make an extensive and critical reconnaissance of the summit range which intervenes between the head waters of the Potomac and the Ohio rivers, and to supply himself with facts and arguments relative to the proposed double line of communication between the east and the west. The entire distance he traveled exceeded six hundred and fifty miles. Generally, it was performed on horseback; but in numerous instances, on account of the rough and rocky character of the country, he was compelled to dismount, lead his horse, and travel on foot. With few intervals, the routes that were examined lay through uncultivated, wild mountainous districts. When he reached the first settlement beyond Fort Cumberland, he was advised of the great dissatisfaction which prevailed among the Indians inhabiting the country, and cautioned, not unnecessarily to expose himself to their wiles and treachery. The information did not in the least deter him from the pursuit of his patriotic object. He kept a journal, in which were minutely recorded his conversations

with every intelligent person whom he met, respecting the facilities for internal navigation afforded by the rivers which have their sources among the Alleghany mountains, and flow thence either to the east or the west. He returned to Mount Vernon on the 4th day of October, and on the 10th of the same month communicated the results of his observations to the Governor of Virginia, Benjamin Harrison, a warm personal friend of Washington, and the father of William Henry Harrison, ninth president of the United States. In his letter introducing the subject, Gen. Washington says, "I shall take the liberty now, my dear sir, to suggest a matter, which would (if I am not too short sighted a politician) mark your administration as an important era in the annals of this country, if it should be recommended by you, and adopted by the assembly." And then proceeds, "It has long been my decided opinion, that the shortest, easiest, and least expensive communication with the invaluable and extensive country back of us would be by one or both of the rivers of this state; which have their sources in the Apalachian mountains."

Governor Harrison communicated the subject to the legislature with a message, as follows:

"IN COUNCIL, October 18, 1784.

"To the Honorable Speaker of the House of Delegates:

"The opening of the navigation of our western waters is of such immense consequence to the state, that it has engaged the attention of our late worthy commander-in-chief, and induced him to favor me with his opinion on the subject, which I enclose and request the favor of you to lay it before the assembly. His reasoning is so conclusive, that I have not a doubt of the utility of the measure remaining with me, and shall feel myself extremely happy if the assembly should coincide with me in opinion, and should set on foot the surveys recommended as a necessary prepartory step to the undertaking."

He then presents various considerations in its support.

On the 15th of November, General Washington arrived in Richmond, where the general assembly was then sitting. The house of delegates being informed of his arrival, adopted unanimously a resolution expressive of their reverence for his character and affection for his person, and appointed a committee of five members, of whom Patrick Henry was chairman, to wait upon him with the respectful regards of the house. The object of his visit was, not only to meet the Marquis de La Fayette, who arrived in the city on the 17th, but also to promote in the legislature his view of a plan of internal improvement.

On the 15th of December it was ordered in the house, that leave be given to bring in a bill for opening and extending the navigation of James River; and Mr. Madison, afterwards president of the United States, was made the chairman of the committee who were instructed to prepare and bring in the same. This bill became a law on the 5th of January, 1785, on which day the speaker, John Tyler (the father of John Tyler, the tenth president of the United States), signed the following enrolled bills, viz.: "An act for clearing and improving the navigation of James River;" "an act for opening and extending the navigation of the Potomac River;" "an act for vesting in George Washington, Esq., a certain interest in the companies established for opening and extending the navigation of Potomac and James rivers."

The act for clearing and improving the navigation of James River, authorized books of subscription to be opened in the City of Richmond, the Borough of Norfolk, at Botetourt Courthouse, at the Town of Lewisburg in Greenbrier county, and at Charles Irvings's store in Albermarle. The books were to be opened on the first day of February then next ensuing, and to be continued open until the tenth day of August following; and on the twentieth day of August there was to be a general meeting of the subscribers at the City of Richmond.

The subscriptions were limited to one hundred thousand dollars, provision being made for scaling them, in case more than that sum should be subscribed. The subscribers were incorporated into a company, by the name of The James River Company. They were empowered and required to elect a president and four directors, for conducting the undertaking and managing all the company's business and concerns, for and during such time, not exceeding three years, as the subscribers, or a majority of them, should think fit. There was to be a general meeting of the proprietors on the first Monday of October in every year, at such convenient town as should be from time to time appointed by the general meeting. The stock was declared to be real estate. Tolls were prescribed, but were allowed to be paid on condition only that the company should make the river well capable of being navigated in dry seasons by vessels drawing one foot water at least, from the highest place practicable, to the great falls, beginning at Westham, and should at or near the said falls, make such cut or cuts, canal or canals, with sufficient locks, if necessary, each of eighty feet in length, and sixteen feet in breadth, as would open a navigation to tide water, in all places at least twenty-five feet wide, except at all such locks, and capable of conveying vessels or rafts drawing four feet water at the least, into tide water, or should render such part of the river navigable in the natural course. The work was to be commenced within one year after the company should be formed, and completed within ten years thereafter.

A meeting of the subscribers was held in the City of Richmond on the 20th of August, 1785, when those books only which had been opened in Richmond, were laid before them; by which it appeared that the whole number of shares was nearly completed; but it was thought advisable to postpone the admission of other subscribers until the success of the books opened elsewhere could be known. Soon after the meeting rose, one of the managers above the falls reached the city, and gave an account of subscribers, which rendered it proba-

ble that the capital sum was overrun. On the next day the meeting proceeded by ballot to the election of a president and four directors; when George Washington was elected president, and John Harvie, David Ross, William Cabell and Edmund Randolph were elected directors.

Edmund Randolph (afterwards attorney general and secretary of state of the United States under General Washington's administration), in communicating these facts to the general, wrote:

"I endeavored to deliver you from the appointment of the office of president, but the universal suffrage called you to the post, without an expectation, however, that you should undergo more of the business than your own convenience may reconcile to you."

The regular annual meeting took place in October, when the same officers were elected for the term of three years. Subsequently, Jas. Buchanan was elected by the board of dirctors treasurer, James Harris was elected manager, and James Brindley engineer.

This constituted the "Old" James River Company. It continued until the year 1820. The presidents successively were: George Washington, from the 21st, August, 1785, to the 5th, October, 1795; William Foushee, from the 5th, October, 1795, to the 20th, January, 1818; John G. Gamble, from the 21st, January, 1818, to the 22d, March, 1819; Wilson Cary Nicholas, from the 22d, March, 1819, to the 20th, February, 1820.

On the 17th, February, 1820, the legislature passed an act entitled "an act to amend the act entitled an act for clearing and improving the navigation of James River and for uniting the eastern and western waters by the James and Kanawha rivers." The provisions of this act were made subject to the ratification of the James River Company, which having been duly given, the act was thereafter to be considered a compact between the commonwealth and the company. By the terms

of the compact, the rights and interests of the company were transferred to the commonwealth, the company acting as an agent and holding in trust for the benefit of the commonwealth, but executing the improvements under the control, direction and superintendence of commissioners appointed by the legislature. By an act passed February 24, 1823, this mode of prosecuting the work was abandoned, and from and after that time all the rights, powers, duties and privileges of the president and directors were conferred upon the governor, lieutenant governor, treasurer, auditor and second auditor of the commonwealth, ex-officio, whose transactions were to be still in the name of the "James River Company." This organization continued until the year 1835. The president under the compact was John Coalter from the 29th, February, 1820, to the 17th, March, 1823. The governors, who were presidents ex-officio, were James Pleasants, John Tyler, William B. Giles, John Floyd, Littleton Waller Tazewell.

The James River and Kanawha Company was incorporated March 16, 1832, and organized May 25, 1835. By the charter the whole interest of the commonwealth in the works and property of the then existing James River Company was transferred to the James River and Kanawha company; the state being interested in the latter to the extent of three-fifths of its capital stock, and individuals and corporations to the extent of the remaining two-fifths. No change of organization has since been made. The presidents have been Joseph C. Cabell, from the 28th, May, 1835, to the 10th, February, 1846; Walter Gwynn, from the 5th, March, 1846, to the 7th, May, 1847; William B. Chittenden, from the 7th, May, 1847 to the 12th, February, 1849; John Y. Mason, from the 11th, May, 1849, to the 26th, October, 1853; Thomas H. Ellis, from the 26th, October, 1853, to the present time.

The old James River Company constructed a canal around the falls of James River, extending from the city of Richmond to Westham, a distance of about seven miles, and improved the

bed of the river by sluices as high as Looneys' creek in the county of Botetourt. The capital was $140,000—one-half owned by the state, the other half by individuals. In addition to the capital, which was expended in original work, there was expended out of the profits, in constructing locks at Richmond to communicate with tide water, and other permanent improvements, in improving the navigation of the North River in Rockbridge county, the Rivanna River in Fluvanna county, and Willis' river in Cumberland county, and in repairs, the sum of $234,000. For the rights of the James River Company in the waters of James River, and the improvements and works of the company, the state agreed to pay the stockholders an annual dividend of 12 per cent. for the term of twelve years, and of 15 per cent. forever thereafter, upon their shares. The stock is now owned and held as follows, viz.:

By the commonwealth of Virginia	250	shares
By the Board of public works	34	"
By the Literary fund	225	"
By Washington college	100	"
By William and Mary college	22	"
By Individuals	69	"
Total	700	"

Which are estimated at $500 per share.

The second James River Company, on state account, enlarged and reconstructed the former canal from Richmond to Westham, and extended the same to Maiden's Adventure in Goochland, a distance of 28 miles; constructed a canal through the Blue Ridge, seven and a half miles long; constructed a turnpike road from Covington to the mouth of Big Sandy River, two hundred and eighty miles long; and improved the Kanawha River by wing dams and sluices, from Charleston to its mouth a distance of about sixty miles. According to a re-

port made by the second auditor to the house of delegates, dated 23rd, December, 1843, these several improvements cost the state (exclusive of the expenditure by the old James River Company) as follows:

James River canal	$ 643,808.28
Blue Ridge canal	368,609.28
Kanawha turnpike road	263,837.63
Kanawha River	91,666.72
	$1,367,921.91

These works were sold to the James River and Kanawha Company at the valuation of one million of dollars, the state receiving a credit for that amount in part of her subscription to the capital stock. The new company moreover was charged with the payment of the annuity of $21,000 forever to the stockholders of the old James River Company; and as this sum is equivalent to a principal of $350,000 at six per cent. interest, it will be seen that the present company took the old works at the price of $1,350,000, which makes their proportional cost as follows:

James River canal	$ 635,373.39
Blue Ridge canal	363,779.92
Kanawha turnpike road	260,380.94
Kanawha River	90,465.75
	$1,350,000.00

For an exceedingly able and interesting review of the affairs of this company, and vindication of its general policy, I refer you to the supplement to the eleventh annual report, prepared by the first president, Joseph C. Cabell, Esq. [See Annual Reports, vol. 2, p. 627 to 769.]

For an equally lucid and conclusive exhibit of the very striking advantages afforded by this improvement, I refer you to the report made by Edward Kenna, Esq., chairman of a select committee, to the twenty-first annual meeting [see Annual Reports, vol. 5, p. 104 to 166], and to a report, or rather "notes and memoranda," furnished by Chas. B. Fisk, Esq., chief engineer of the Covington and Ohio railroad, for the use of an internal improvement convention, which assembled at the White Sulphur Springs in the summer of 1854. This document is herewith separately communicated, together with a map and profile.

Experience in this country has not been altogether favorable either to the construction or management of public works exclusively on state account. It is believed that objections are applicable also to corporations over which the state has no control. We, here in Virginia, have adopted what is known as the "joint stock" system—combining public and private subscription, and regulated by a scale of voting, which is intended to make the power of the state a conservative, preventive power, while generally the governing power is left to that vigilance, prudence and economy which private interest is presumed to impart. In the case of the James River and Kanawha Company, each stockholder may, in person or by proxy, give the following vote, on whatever stock he may hold in the same right, to wit: one vote for each share of such stock not exceeding ten, and one vote for every four shares exceeding ten: but the vote of the state shall not exceed two-thirds of the whole number of votes given by others in the same elections, or on the same question.

The capital stock is at present held as follows:

By the commonwealth of Virginia	30,000	shares
By the Bank of Virginia	5,004	"
By the city of Richmond	5,768	"
By the city of Lynchburg	673	"
By Washington college	100	"
By individual stockholders	8,455	"
Total	50,000	

To constitute a general meeting, there must be present, either in person or by proxy, a number of stockholders having a right to give a majority of all the votes which could be given at a meeting of all the stockholders.

The stock held by the state is represented in these general meetings by three proxies appointed by the Board of public works.

The affairs of the company are administered by a president and six directors, constituting a board, chosen as follows: the president is elected by a vote of all the stockholders present in general meeting; one director is elected in the same manner; two directors are elected by vote of the private stockholders alone; and three directors are appointed by the Board of public works. These appointments and elections are made annually.

A branch organization, which is meant to be merely temporary, called The Kanawha Board, has been recently introduced, for the purpose of aiding in improving the navigation of the Kanawha river from its mouth to Loup creek shoals. It is composed of the president of the company and five directors, three of whom are appointed by the Board of public works, and two elected by the stockholders other than the state. The directors are required to be residents of the Kanawha valley. The Kanawha board, as special agents, are en-

trusted with the control, management and supervision of the Kanawha improvement, subject to the instructions of the stockholders, but have no control over any of the other works or affairs of the company. In case the president shall differ with the Kanawha directors in any matter involving in his opinion the general interests of the company, he has authority to call a meeting of the two boards of directors together, and submit such matter to them as one board; and their decision shall be carried into effect.

By the act of incorporation it is provided that the works which the James river and Kanawha company "shall construct, and the property which they shall acquire by purchase or condemnation, under the authority of this law, shall be vested in them and their successors forever, for their own use and benefit, exempt from all public taxes, burdens or charges, other than those which may be imposed or authorized by this act."

I come now to a description of the line.

What is usually known as the Virginia water line, extends from the capes of Virginia to the Ohio river, a distance of 636 miles, and consists of—

I. The James river, from its mouth to the head of navigation at the city of Richmond, a distance of 151 miles; and

II. The James river and Kanawha improvement, extending from the city of Richmond, to Point Pleasant, at the mouth of the Kanawha river, a distance of 485 miles.

James river is navigable for ships of one thousand tons burden, drawing seventeen feet, from its mouth to City Point, 36 miles below Richmond. From City Point, vessels drawing fifteen feet water, can ascend to Warwick, five miles below Richmond. From Warwick to Richmond the river is navigable at this time for vessels drawing eleven and a half feet water. But improvements are in progress, at the expense and

under the supervision of the city of Richmond, by which the depth will be increased to sixteen feet, from Richmond to City Point.

The James river and Kanawha company have, however, no authority over James river below Richmond.

For the purpose of description, the James river and Kanawha improvement will be divided into—

1st. The Richmond dock and tide water connection, ...1 mile

2nd. The first division of the canal, extending from Richmond to Lynchburg, ...146½ miles

3d. The second division of the canal, extending from Lynchburg to Buchanan, ... 50 miles

4th. The third division of the canal, extending from Buchanan to Covington, ... 47 miles

5th. The fourth division of the canal, extending from Covington to the Greenbrier river, ...33½ miles

6th. The Greenbrier and New rivers to Loup creek shoals on the Kanawha, ... 119 miles

7th. The Kanawha river from Loup creek shoals to the Ohio river, ... 89⅓ miles

First. The Richmond Dock and tide water connection—By means of this improvement, vessels ascend from the river into the dock, where they are met by canal boats, which ascend from the basin at the terminus of the canal, and lay alongside the vessels, for the purpose of exchanging cargoes; or, the canal boats can descend to the river, and without breaking bulk, be towed to City Point or Norfolk.

Vessels enter the dock by means of a ship lock, which is founded upon solid rock, and built of the most substantial cut granite. It is 180 feet long between the gates, 35 feet wide, has a lift of 15 feet, and has 16 feet water on the mitre sill. It will pass vessels of 500 tons.

The dock is 4,100 feet long from the ship lock to 17th street, and has a continuous wharf, protected by a granite wall, for its whole length on the north side, and for about 1,000 feet on the south side. The depth is from 11 to 15 feet, and the average width 100 feet. Above 17th street is a continuation called "the upper dock," which is also surrounded by a substantial granite wall, and is now only used by canal boats, but whenever the trade shall demand it, it can be made accessible to vessels, by means of a pivot bridge, thrown across in the line of 17th street extended. This upper portion is 800 feet long and 200 feet wide.

The dock is connected with the basin by means of five locks, having an aggregate lift of 69 feet. These locks are built of hewn granite, and, with the ship lock, will in their style and finish compare favorably with any similar works in this country.

The total cost of the dock and tide water connection has been $851,312. It was completed in the year 1854.

Second—the first division of the canal, extending from the basin in Richmond to the city of Lynchburg, comprising 137¾ miles of canal and 8¾ miles of slackwater navigation.

The trunk of the canal is 30 feet wide at the bottom, and 50 feet at the water line, and was originally cut to the depth of five feet. The tow-path is 12 feet wide and the berm bank 8 feet.

The locks are 100 feet long between the gates, and 15 feet wide in the chamber. The total lockage from the basin in Richmond to Lynchburg is 429 feet. The works of art on the first division consist of—

Fifty-two lift locks having a total lift of 429 feet; 6 guard locks; 2 accommodation locks; 3 principal dams across James river, affording slack-water navigation; 9 other dams across James river, or to islands in the river, which serve for the purpose of feeders to the canal, or for connection with the

south side of the river; 11 aqueducts, three of which have wooden trunks, and the remainder are of cut stone; 191 culverts; 133 farm and road bridges over the canal; 3 tow-path bridges.

Of the locks 22 are built of cut stone, and the remainder of rubble masonry, faced with timber and plank.

For a minute description of this division of the canal, see the 5th annual report of the president to the stockholders, from page 515 to page 542.

It was completed in the year 1840, and has cost $5,837,628, or $39,982 per mile.

On the first division are works connecting the canal with the south side of the James river, usually called the South Side Connections. These works are a dam and an outlet lock at Cartersville, and three bridges; one at New Canton, one at Hardwicksville, and one at Bent Creek. These bridges are wooden, arched, and covered, and built upon cut stone abutments and piers. The total cost of the South Side Connections has been $162,685

There is also a connection on the north side of the river with the improvement of the Rivanna river, an important tributary to the James, which has cost the James river and Kanawha company the sum of $115,043.

Third—The second division of the canal extends from the city of Lynchburg to the town of Buchanan, a distance of 50 miles, and consists of 22 miles of canal and 28 miles of slackwater navigation.

The principal works of art on this division are—

Thirty-eight locks, having a total lift of 299 feet, built with a few exceptions of cut stone; 4 stone dams, and 7 timber dams, across James river; 1 aqueduct of 50 feet span; 8 culverts; 48 square drains; 17 tow-path bridges, 2 farm bridges

and 1 street bridge, of 100 feet span, over the basin at Lynchburg.

For a minute description of this division, see 17th annual report, from page 218 to 225.

It was completed in the year 1850, and has cost $2,422,556, or $48,451 per mile.

Connected with the second division is the North river improvement, extending from the mouth of North river to the town of Lexington, a distance of 19¾ miles. Of this improvement 10 miles are canal, and 9¾ are slack-water navigation. The principal works of art are——

Twenty-two locks, all of rubble stone masonry, and of the same size as those on the main line of the canal, and having a total lift of 188 feet; 9 stone dams, and one timber dam, across North river, and 4 aqueducts.

For a more particular description of this work, see the 23d annual report, from page 373 to 375. This work is not yet completed, but will be by the end of the following year. It has already cost, including the outlay of the North river navigation company, by which company it was commenced, $506,551; and to complete it, it is estimated will cost about $30,000 additional.

Fourth—The third division of the canal, follows the valley of James and Jackson rivers from Buchanan to Covington, a distance of 47 miles.

This division has been definitely located, and the first 15 miles above Buchanan was put under contract in the year 1853, but, for the want of funds, the work was suspended in the year 1856.

Forty-one miles are canal, and six miles slack-water navigation. The total lockage is 436¾ feet.

The principal mechanical structures are 36 lift locks, two guard locks, one guard and lift lock, four aqueducts across James river, each about 320 feet long, three aqueducts of 50 feet span, and three dams across James river. There are also the Marshall tunnel 1,900 feet long, and the Mason tunnel, 198 feet long; by means of which, 5⅝ miles of distance are saved.

Of this work there are now nearly completed ten lift locks, and the abutments and piers of three of the aqueducts over James river. The foundations of two of the dams, up to the surface of low water, have been put in; about 800 feet of the Marshall tunnel has been excavated, and the Mason tunnel is completed. The mechanical work upon this division is executed in the best style, and of the most substantial material, all of the structures being built of hewn limestone, laid with hydraulic cement.

The estimated cost of this division, based upon careful surveys and accurate cross sections of the whole line, and estimated at prices for which a good deal of the work has been let and partly executed, is	2,555,131.00
The amount of work done is	511,094.00
Leaving the amount still to be done,	$2,044,037.00

Fifth—The fourth division of the canal, extending from the town of Covington to the Greenbrier river, 33⅓ miles.

At Covington the canal crosses Jackson's river by an aqueduct, and follows the valley of Dunlap's creek to Crow's tavern, at the base of the Alleghany mountain, a distance 17½ miles; for a description of which see 20th annual report, page 756.

At Crow's the line of canal leaves the valley of Dunlap's

creek, and following the bed of Fork run, ascends the eastern side of the Alleghany mountain, by a series of locks and dams, to the summit level.

The distance from Covington to the eastern entrance of the Alleghany tunnel is 20.7 miles, and the total lockage is 675 feet.

The summit level is 4½ miles long, and 1,921 feet above tide water, and pierces the Alleghany mountain by a tunnel 2 6-10 miles long.

Emerging from the western side of the Alleghany mountain, the canal descends by the valleys of Tuckahoe and Howard's creeks, 241 feet in a distance of 10 miles to the Greenbrier river.

The summit level, and the portion of the canal on each side of it between Dunlap's creek and the Greenbrier river, a distance of 15½ miles, will be supplied with water chiefly from Anthony's creek. Upon this creek a reservoir is to be made, covering 2,753 acres of land, and having an average depth of 60 feet, from which the water will be conducted by a feeder canal about 9 miles long, to the summit level. For information and proof of the sufficiency of the supply of water for the summit level, see "reports on the survey of summit level," in 17th and 18th annual reports.

The works of art on this division east of the Alleghany, will be 63 locks, 8 dams across Dunlap's creek, and 1 across Brush creek; one aqueduct over Jackson's river 250 feet long, and one over Dunlap's creek 100 feet long; and west of the Alleghany, there will be 24 locks, one aqueduct of 50 feet span over Tuckahoe creek; one aqueduct of 50 feet span over Howard's creek, and one dam across Howard's creek.

The estimated cost of the fourth division is as follows:

1. From Covington to the eastern entrance of the Alleghany tunnel 20.7 miles, based upon an estimate made by John B. Mills, Civil engineer, in 1851, to which the chief engineer adds 25 per cent., making	1,574,086.00
2. From the eastern entrance of the Alleghany tunnel to Greenbrier river, 12.63 miles, including the reservoirs and feeders for the summit level, based upon surveys made in the year 1851, by Edward Lorraine, now chief engineer, revised and corrected, with 20 per cent. added for contingencies	2,842,821.00
Total estimated cost of fourth division	$4,416,907.00

Sixth—The Greenbrier and New rivers, from the mouth of Howard's creek to Loup creek shoals on the Kanawha, 119 miles.

From the mouth of Howard's creek to the Ohio river, the character of the improvement will be changed. The line that we have been heretofore occupied with from Richmond to the Greenbrier river is to consist of a canal of the dimensions previously described under the head of the "First division." The line down Greenbrier, New and Kanawha rivers, will consist of an improvement of those rivers for steam boat navigation—and the mouth of Howard's creek, or what is known as "Greenbrier bridge," will be either the point of transhipment from steam boats to canal boats, or the point where canal boats having been towed up by steam boats, will change steam power for horse power, and vice versa.

1. Greenbrier river, from Greenbrier bridge to New river, 49.62 miles.

This part of the line was surveyed by Edward H. Gill, civil engineer, in the year 1841, and an estimate of the cost of a mixed improvement for canal and slack-water navigation was furnished.

The present chief engineer has estimated this section of the improvement from Mr. Gill's notes of the width and fall of the river, but has provided for locks and dams adapted to steam boat navigation. The dams and locks to be of stone. The locks to be 200 feet long between the gates, and 40 feet wide in the chamber, which will admit steam boats of 350 tons burden, or four canal boats at once.

Twenty-one dams 300 feet long and 25 feet high, with locks as above, at $116,500 each, $2,446,500.

2. New river, from the mouth of Greenbrier to the foot of Loup creek shoals, 69.28 miles.

This part of the line was estimated by Mr. Gill for a lock and dam improvement, adapted to steam boat navigation, the locks to be 130 feet long and 30 feet wide. [See his report, in the 7th annual report, page 61.]

As his estimate was for stone dams and locks, the present chief engineer has adopted it, and made the requisite addition thereto for the increased length of the locks.

The economy of increasing the length of the locks will be obvious, when you consider that the short locks will only pass steam boats of 175 tons burden, or two canal boats, while the long locks will pass steam boats of 350 tons, and four canal boats, thus doubling their capacity, at a cost of about $765,000, or about 37 per cent. on the original estimate.

After making the addition for the increased size of the locks, Mr. Lorraine adds 20 per cent, to the whole, for contingencies, which brings the estimate for the New river division, to $3,396,480.

It may be proper to state that the surveys of the Greenbrier and New rivers have not been so elaborate nor so exact as those of other parts of the line, but they have been surveyed sufficiently to obtain a correct profile, and the general character of the beds of the streams, and to establish beyond any doubt the practicability of their improvement in the manner proposed. Of the practicability of their improvement, we may feel well assured by the concurrent opinions of Benjamin Wright, Edward H. Gill and Charles B. Fisk, three eminent, practical, hydraulic engineers. Judge Wright, after acquiring practical experience and high reputation on the Erie canal, was selected as the first chief engineer of the James river and Kanawha company. In his letter to the board of directors, published in the 7th annual report, page 73, he says: "From the facts disclosed by the survey on the lines of the Greenbrier and New rivers, I am satisfied that the difficulties of improving those rivers have heretofore been overrated, and that the plans now proposed for that purpose are both practicable and expedient. I have carefully examined the estimates for the rivers above named, and am impressed with the belief, that with good management the work can be successfully executed for the amount of those estimates."

Mr. Fisk, the late eminent chief engineer of the Chesapeake and Ohio canal, has also personally examined the Greenbrier and New rivers, and approved of the proposed plan for their improvement. See his "report on the improvement of the Kanawha, New and Greenbrier rivers," in the 21st annual report, page 74.

Seventh—The Kanawha river from Loup creek shoals to its mouth, a distance of 89-3/10 miles.

This river is already navigable for steam boats for 70 miles above its mouth, for about ten months in the year, but the navigation is interrupted by low water for four months in the year, and entirely suspended for about two months.

It is proposed to improve this stream by straightening and deepening the channels, and by concentrating the water in them by means of wing dams.

The estimate of the cost of this section is based upon recent surveys made under the direction of the present chief engineer, and is as follows:

Dam at Lyken's shoal, 650 feet long and 20 feet high, with guard and lift lock of 10 feet lift, all of stone,	139,750
From Lyken's shoal to Point Pleasant, improved for sluice navigation, as above described,	410,565
	550,317
Add for contingencies, 10 per cent.	55,031
Total cost of improving Kanawha river	$605,348

I will remark that the proper plan for the improvement of the Kanawha River has been a subject of contention since the organization of the company. In 1838, Mr. Charles Ellet, Jr., at that time the chief engineer of the company, recommended an improvement by sluices, and canals, and locks in the river. Judge Wright, the consulting engineer of the company, dissented from these views of Mr. Ellet, and recommended an improvement partly by sluices and partly by locks and dams across the river. See 4th annual report, page 462 to 491. In 1854, Mr. Charles B. Fisk was requested to examine the Kanawha, and report a plan for its improvement, which he did. and recommended an improvement by open dams. See his reports, 20th annual report, page 741, and 21st annual report, page 74. Mr. Fisk's plan was formally adopted by the stockholders in January, 1858. In March, 1858, the stockholders resolved to employ Mr. Charles Ellet, jr., to examine the Kanawha river, with a view to its improvement

by means of reservoirs. Accordingly, in the ensuing summer, Mr. Ellet made a survey, and at the 24th annual meeting submitted an elaborate "report on the improvement of the Kanawha, and incidentally of the Ohio river, by means of artificial lakes." Thereupon the stockholders rescinded their resolution of January previous, and referred the whole subject to a committee of eleven, with authority and instructions to decide upon what plan the river should be improved. The committee of eleven met on the 24th of February last, and adopted Mr. Ellet's plan of improvement. The stockholders, upon receiving the report of this committee, at the last annual meeting, merely ordered it to be laid upon the table.

The committee, while adopting Mr. Ellet's plan, recommended that it be carried out only in part at present, by an improvement estimated to cost $250,000.

The estimated cost of improving the Kanawha river upon Mr. Fisk's plan, is $605,348.

The cost of improving the river on Mr. Ellet's plan, is estimated by him at $500,000.

It is the opinion of the present chief engineer, that the bed of the river cannot be improved upon any plan adequate to the accommodation of the through trade, for a less sum than the estimate for Mr. Fisk's plan; and that if Mr. Ellet's reservoirs be built, the sum of $529,080 should be added, making the total estimated cost of improving the Kanawha river, $1,134,428.

In the present state of the case, I have taken Mr. Lorraine's estimate of $605,348, as the cost of improving the river from its mouth to Loup creek shoals.

RECAPITULATION.

Cost of the finished portion of the James river and Kanawha improvement:

Dock and Tide water connecton, ...	851,312
First division, Richmond to Lynchburg, ...	5,837,628
South side connections, ...	162,685
Rivanna connection, ...	115,043
Second division, Lynchburg to Buchanan, ...	2,422,556
North River improvement, as completed, ...	536,551
Third division, work done, ...	511,094
	$10,436,869

Estimated cost of the unfinished portion of the James river and Kanawha improvement:

Third division Buchanan to Covington, 47 miles, ...	2,044,037
Fourth division, Covington to Greenbrier river, 33.33 miles, ...	4,416,907
Greenbrier river, 49.62 miles, ...	2,446,500
New river, 69.28 miles, ...	3,396,480
Kanawha river, 89.30 mles, ...	605,348
Total miles, 288.53	
	$12,909,272

Let us now try to estimate the future trade of this line.

In considering this branch of our subject, it will be of course impossible to use that exactness of expression and accuracy of facts and figures which I have been enabled so far to use when speaking of the past. We enter now somewhat into the region of probabilities; making our comparisons of a future, not however wholly speculative or fanciful—but a future which, based upon certain facts, and governed by certain laws, must produce certain results. The laws of trade are as fixed and sure as those of nature. One of them is, that all other things being equal, freight will seek the shortest and cheapest route to market. If, then, it can be shown that the water line route through Virginia is the shortest and cheapest transit for the products of the great west to the Atlantic seaboard, and thence to a European market; if it can be shown that this route possesses eminent and distinguishing advantages over every other route; the question will be, not what will be the trade of the James and Kanawha canal, but what the capacity of the canal: for its trade will be the trade of the great west, limited only by its capacity to accommodate that trade.

I have already invited your attention to Mr. Cabell's "supplement," and Mr. Kenn's and Mr. Fisk's reports. I now again adduce them, for proof of the position just taken in regard to the superiority of the Virginia water line route. If I mistake not, you will admit their arguments to be absolutely conclusive on this point. In reference to Mr. Fisk particularly, I deem it appropriate to say, that he is one of the most distinguished civil engineers in the United States, and one who is remarkable for the caution with which his statements are made, and their accuracy when made. You will observe in his report, that while his object is to prove the advantages and value of the Covington and Ohio railroad, he has demonstrated that that road is chiefly indebted to its connection with the water line for its superiority over other routes in the transportation of heavy freight.

I can add but little to the facts and arguments presented by these gentlemen, in their respective reports; yet I may show, that Virginia possesses not only the best route from the Ohio to the Atlantic, but that upon her Atlantic seaboard she possesses the most capacious safe and convenient harbor from Florida to New Foundland; and for this purpose I take the testimony of Lieutenant Matthew F. Maury, of the United States navy, whose contributions to nautical science have elicited the applause of the world. In a series of letters to his son, upon the internal improvements of Virginia, published in the year 1854, he thus describes the commercial advantages of Norfolk:

"As to the natural advantages of position, depth of water, and accessibility by land and sea, NORFOLK HAS NO COMPETITOR AMONG THE SEAPORT TOWNS OF THE ATLANTIC.

"Midway the Atlantic coast line of the United States, Norfolk is the most convenient, because the most central point where the produce of the interior may be collected, and whence it may be distributed, north and south, right and left among the markets of the seaboard.

"Its climate is delightful. It is exactly of that happy middle temperature where the frosts of the north bite not, and where the pestilence of the south walketh not. Its harbor is commodious, and as safe as can be. It is never blocked up with ice, and as to the egress and ingress between it and the sea, it possesses all the facilities that the mariner himself could desire. It has the double advantage of an outer and inner harbor. The inner harbor is as smooth as any mill pond; in it vessels lie with the most perfect security, where every natural facility imaginable is offered for lading and unlading. Being ready for sea, the outward bound trader dropping down from this snug mooring, and approaching the sea, finds a storm

raging from outside. The outer harbor then affords a shelter until the fury of the gale is spent, when the white-winged messenger trips her anchor, trims to the breeze, and goes forth rejoicing on her way to the haven where she would be.

"Moveover, the prevailing winds in the parallel of Norfolk are westerly winds, which are fair for coasting, and for going seaward in any direction. A little to the south of that parallel you find the northeast trades, which are fair winds for the inward bound Norfolk vessel.

"Then there is the gulf stream—that mighty river in the ocean—upon the verge of which Norfolk stands. It flows up with a current which, without the help of sweeps, sails or steam, will carry the European bound vessel out of Norfolk at the rate of nearly one hundred miles a day, directly on her course.

"Then at the sides of this, and counter to it, are eddies which favor the same vessel on her return to Norfolk. These hawse her along and shorten her voyage by many a mile.

"Next, to complete the survey seaward, cast your eye down to the great Amazonian water shed of South America. That river drains a district of country twice as large as the whole Mississippi valley. The volume of water discharged by the Amazon, into the sea, exceeds by six fold that which the Mississippi empties into the gulf; and it opens a highway for commerce and navigation from the sea to the foot of the snow capped mountains that rise upon the rim of this great basis, and touch the clouds under the equator. This country is to be the CORNUCOPIA of the world. Its climate is that of an eternal spring, its soil the most prolific on the face of the earth, and its minerals the richest and the rarest, and the most abundant that ever adorned the person, or ministered to the convenience of man.

"But you have read your uncle Lewis Herndon's Exploration of the Amazon—you have studied with me the physical geography of the country drained by it, and you understand how and why the winds are constant and fair both ways for vessels trading between that river and Norfolk.

"Such are the natural advantages of Norfolk seaward. Let us look ashore, and consider them landward. You will better appreciate these by studying them in contrast. Therefore, we will compare them with the natural inland advantages of New York.

"A bay or harbor which is conveniently accessible to the sea, is supposed to offer natural advantages for a commercial city in proportion to the fertility and extent of the back country that is tributary to it. The back country that is naturally tributary to the city of New York, is confined to the counties that are drained by the Hudson, or washed by the waters of the sound. And if there were no such things as internal improvements—no way in the interior by which produce and merchandise could be transported from one water shed to another—the people for whom New York would export and import would be those who live in the valley of the Hudson, or who inhabit the shores of Long Island sound.

"Now, contrast the fertility and extent of this country with the back country that is tributary to Norfolk. Both shores of Chesapeake Bay are tributary to it; and this magnificent sheet of water is the natural receptacle also of the drainage and surplus produce of the valleys of the James river, the York, the Rappahannock, the Potomac, and the Susquehanna, and surplus produce of the valleys of the James river, the their shores. The back country therefore which, without portage, is naturally tributary to Norfolk, not only surpasses that which is tributary to New York, in mildness of climate, in fertility of soil, and variety of production, but also in geographical extent by many square leagues, the proportion being as three to one in favor of the Virginia port.

"But there are such things as natural portages, by which commerce even in a rude state may pass from one river valley to another on its way to the sea. Now let us see what portions of country are nearer to New York and what to Norfolk, assuming that if these natural portages be equally improved, all that country which they will bring nearer to Norfolk will be tributary to Norfolk, and all that they may bring nearer to New York will in like manner be tributary to New York.

"Therefore, to divide and lay off this back country, turn to the map; stretch a string upon it from Norfolk to New York, and make a dot half way between them. Now seek a point on the south shore of lake Erie, that is equidistant from New York and Norfolk; draw a line from the dot to this point, and you will have a dividing line of distance between the two places, every point along which will be just as far from the one place as the other. You will find that this line runs through Delaware, and cuts lake Erie near Cleveland, Ohio.

"Thus you will perceive that Chicago, in Illinois, and St. Louis, Missouri, are actually nearer to Norfolk than they are to New York, even by an air line. You see, moreover, that as between New York and Norfolk, the natural advantages here are greatly in favor of the latter. THE MOST DIRECT WAY TO THE SEA THROUGH EITHER OF THESE PORTS, FROM MOST OF THE LAKE COUNTRY, AND FROM ALMOST THE ENTIRE MISSISSIPPI VALLEY, LIES THROUGH VIRGINIA. The natural advantages then, of Norfolk, in relation to the sea, or to the back country, are superior beyond comparison to those of New York."

The present delegate elect from the city of Norfolk to the general assembly (Mr. Bisbie, wrote a pamphlet two or three years ago, entitled "An appeal for the speedy com-

pletion of the water line of Virginia," which has been extensively circulated, and has attracted much attention, in which he thus strongly groups his views of what he calls the two grand centres of Atlantic and interior trade.

"We beg the reader to look again at the map; to observe that the junction of the Ohio with the Mississippi is the grand converging point of the Kansas, Nebraska, Missouri, Mississippi, Illinois, Ohio, Cumberland and Tennessee rivers—the geographical centre of their trade, and the converging and diverging point of full ten thousand miles of inland steam boat navigation—a vastly greater amount than any other gathering point in the world!

"Then look at Norfolk, the great central seaport of the Atlantic; at the very centre of the Atlantic coast; on the finest, most convenient, safe and capacious harbor on this continent: open at all times of the year; accessible from any point and with any wind; and, all in all, better calculated for a mighty trade than any harbor in the world!

"Then consider, this vast centre of interior, and this vast centre of Atlantic trade, are, excepting the little space occupied by the 'unfinished section,' connected by an unbroken water line, which is at once shorter, safer, cheaper, and more reliable than any other, and open to trade for eleven months in the year.

"Does it not look as if these two great centres were made expressly for each other—and that we are almost abusing Providence in letting the little gap remain unfinished?"

The present patriotic, able and eloquent chief magistrate of our state, in his letter to Mr. Lacouture, of the 12th April, 1857, expresses himself to the same effect. He describes Norfolk as "a point where there is a harbor spacious enough and deep enough for all the merchant and naval marine of the world, and affording a site for a city rivaling in the

course of time New York or London." He portrays in the most graphic language the resources of Virginia within her own limits—demonstrating that her counted and uncounted wealth alone, is enough to justify all her expenditure and taxation, past and prospective, for the completion of her main lines of improvement—and particularly that line which is to join the waters of the Chesapeake to those of the Ohio—which has ever been a favorite improvement with him. And he adds: But if Virginia were a waste from the seaboard to the Ohio, without a tithe of this perpetual resource, still the back country beyond her is interminable and exhaustless, AND HER ELIGIBILITY OF TRACK FOR ITS PRODUCE IS WORTH TEN FOLD MORE MILLIONS THAN SHE CAN EVER BE CALLED ON TO EXPEND!"

The evidence would thus appear to be conclusive, that when the Virginia canal is completed, it will command the trade of the west, and doing that, must be worked to its utmost capacity; and therefore, in calculating the future trade of this improvement, we have only to decide upon its actual capacity for through freight, in connection with its tributary and way freight.

The capacity of the canal at Richmond will be limited by the number of boats that can be passed through the first lock above the city. To ascertain this, we will suppose a boat to pass through this lock every 7½ minutes; which was the daily average on the Erie canal at lock No. 3, in the year 1853, when that canal did its heaviest business; and we will assume that the canal will be in working order for eleven months in the year, or 330 days, and that the average load of a boat will be 50 tons, or 100,000 pounds. There would then pass this lock in one year, 63,360 boats and 3,168,000 tons. This is less than the actual tonnage on the Erie canal in 1853, which amounted to 1,742,056 tons of up freight, and 2,505,797 tons of down freight, a total of 4,247,853 tons. Assuming then that 3,168,000 tons will enter or leave the basin at Rich-

mond, it is necessary to determine the different points to and from which this freight will be shipped, and how much of it will be throught freight. The present tonnage on the canal is about 200,000 tons, of which about

10,000 tons are carried ..... 196 miles
80,000 tons are carried ..... 146 miles
110,000 tons are carried ..... 50 miles

If the work were fully and fairly in use, I think we might calculate upon the following increase and distribution of freight:

140,000 tons, an average distance of 50 miles, at 1½ cents per ton per mile	105,000.00
130,000 tons, to and from Lynchburg, a distance of 146 miles, at 1 cent per ton per mile	189,800.00
20,000 tons, to and from Buchanan, a distance of 196 miles, at 1 cent per ton per mile	39,200.00
30,000 tons, to and from Covington, a distance of 243 miles, at ¾ cent per ton per mile	54,675.00
100,000 tons cannel coal and oil from the Kanawha valley to Lynchburg, a distance of 250 miles, at ½ cent per ton per mile	125,000.00
200,000 tons cannel coal and oil from Kanawha valley to Richmond, a distance of 400 miles, at ¼ cent per ton per mile	200,000.00
2,548,000 tons through freight, 485 miles, at 2 mills per ton per mile	2,471,560.00
Revenue from tonnage of the Kanawha River westward	100,000.00
Revenue from the Richmond dock	100,000.00
Revenue from water rents	30,000.00
Revenue from passengers	10,000.00
	$3,425,235.00

That the estimate of 2,548,000 tons for the through tonnage is moderate, will, I think, be acknowledged, when it is known that the actual capacity of freight boats, of the largest size now navigating the canal, is from 80 to 90 tons. If the calculation were made upon a basis of 70 tons to the boat, the result would be a capacity for through freight of 3,815,200 tons. Moreover, in consequence of the deposits of mud, and washings of sand from the hill sides, the canal has not its full depth of 5 feet, but has actually filled up in some places to about 3½ feet, and that is the depth to which the boats are now loaded. A very little additional expense (which in consequence of the embarrassed condition of the company's affairs they cannot now encounter) would maintain a depth of 4½ feet, and then the capacity of boats would be increased to 100 tons. Nor in this estimate do I consider the effect of steam as a motive power, which will most probably, at an early day, be introduced upon the canal.

The estimate of revenue above given is based upon assumed rates and quantities, the value of which you are as competent to determine as I am. For instance, you will be able to say whether thirty thousand tons to and from Covington, independently of all reliance upon the Covington and Ohio railroad, be a sufficient estimate, considering even the lumber trade alone, which I doubt not will be immense, immediately upon the completion of the canal to that point. So, too, as to the quantity of cannel coal and cannel oil, from Kanawha to Richmond. If I be not mistaken in the future demand for these articles at this point, one-fourth of the capacity of the canal would probably be required for that trade alone. Then again, the articles of salted meats, flour, grain and tobacco, seeking exit to Europe. Here the difficulty is rather to keep the estimate within limits which shall appear to be reasonable, than to exaggerate it. Credulity is indeed taxed, when we consider the products of the great central region of the west—that almost illimitable region of the richest land upon earth, which most remarkably has so small a number of outlets by water to connect it with the rest of the globe; these being the Mississippi river in one direction and

the St. Lawrence river in another; both of which we know are liable to many obstructions and dangers. And so far as the artificial routes through the states of New York, Pennsylvania and Maryland are competitors, we know equally that our line possesses admitted and decided advantages over them. On this point I beg to quote the language of my honored predecessor, Judge Mason. In his last report to the stockholders, before proceeding upon his mission to France, speaking of the canal and the Covington and Ohio railroad, he thus expresses himself. (See 19th Annual Report, page 561):

"In the great valley to which these improvements are tending, the estimated annual production of articles of commerce for transportation to the Atlantic ports of the United States, is seventeen million tons of freight. Considering the physical objections to the down stream transportation by way of New Orleans, arising from the heat and moisture of the climate, often highly injurious to bread-stuffs, the cereal grains, tobacco and provisions, and the interruption of the northern routes, for many months in the year, by the severity of the climate, I have not doubted that if lines of transportation shall be established through Virginia to the Ohio River, they must and will command a considerable portion of the trade of the valleys of the Mississippi and the Ohio. The capacity of the railroad is not equal to the transportation annually of more than four hundred thousand tons. The capacity of the canal is to carry nearly three millions. Both improvements will find most remunerating employment. The length of your improvement will be 483 miles; and if it can command one million tons of extra-territorial freight, conceding to the railroad all the passengers, and as much freight as it can carry, you may reduce your tolls to one cent per ton per mile, and your revenue will be four millions eight hundred and thirty thousand dollars, exclusive of freight on articles of consumption taken in return, and of the way freight furnished by the people of Virginia, along the whole length of the line.

"Is this an extravagant anticipation? The articles of freight making the enormous aggregate before stated, are the surplus

products of the interior, and must find their way to market by some line of navigation or improvement. The competing lines are limited in number. The Virginia lines will have the advantage of distance and of climate over both southern and northern routes; and over those by the lakes, this controlling advantage, that the great productions of provisions and breadstuffs, being ready for market in December and January, cannot use the northern waterlines, while obstructed by ice, but through Virginia they may be sent to market in the winter months, thus avoiding the necessity of keeping them on hand at risk of injury or loss, with the advantage of applying labor to getting them off, at a season when it could not be very advantageously employed in the field; and of the commercial advantage of converting them into money at an earlier day. The interest on the proceeds of sale, by our routes, for the period which must elapse before they can be sent by the New York canal, would make a most important item in our favor."

In estimating the value of this canal, I do not propose to consider the subject in the enlarged aspect of its value to the state—as a means of developing agricultural, mineral and manufacturing resources, of increasing population and wealth, of creating a domestic and foreign trade, of imparting greatness and splendor to the metropolis, of building up Norfolk as a center of commerce, but simply of its value as a moneyed investment.

The actual cost to the James river and Kanawha company of all the works and property belonging to the company has been		10,413,996.00
The estimated cost of completing the waterline is, in round numbers		13,000,000.00
Supposing that it would take five years to complete the work, there would then be an interest account of:		
5 years on say, $2,000,000.00, at 6 per cent.	600,000.00	
4 years on say $3,000,000.00, at 6 per cent.	720,000.00	
3 years on say $3,000,000.00, at 6 per cent.	540,000.00	
2 years on say $3,000,000.00, at 6 per cent.	360,000.00	
1 year on say $2,000,000.00, at 6 per cent.	120,000.00	
		2,340,000.00
Total cost when completed		$25,753,996.00
Estimated revenue	3,425,235.00	
Expenses of repairs, salaries of agents &c., at $750 per mile	363,750.00	
Net income		$3,061,485.00

Which is very nearly twelve per cent. upon the whole cost of the work.

The financial condition of the company is of course a matter of great concernment in a negotiation like the present.

A few brief paragraphs under this head will suffice to make you understand our present condition and the cause of all our woes.

The original capital was five millions of dollars—of which the state paid one million in old works, and of the private subscription there proved to be insolvent $73,336.46—leaving $3,926,663.54 as the actual available cash capital; and even this, in consequence of the failure of the Bank of the United States, the commercial disasters of the years 1836 and 1837, and other unfavorable circumstances, was collected slowly, irregularly, and at heavy cost. All beyond the capital thus realized, has been borrowed money, on which the company has been required to pay interest from the day it was received, before it was expended, and of course long before it began to yield any return. The amount of interest actually paid is $2,765,397.25, exclusive of the annuity of $399,000 paid to the stockholders of the old James river company.

The charter of the company, section 28 (Annual Reports, vol. 1, p. 755), is as follows:

"If the capital of five millions of dollars shall be found insufficient to complete the works required of the company, they shall be at liberty to enlarge their capital to any amount which may be found necessary to that end. The commonwealth shall be at liberty to take two-fifths of the additional capital, or any portion thereof, and the other stockholders to take the residue."

As the work progressed, the cost considerably exceeding the estimate, it became apparent even before the completion of the line to Lynchburg, that an increase of capital would be required for its continuous prosecution. Application was therefore made to the legislature, at the session of 1838-39, praying that honorable body to subscribe on the part of the state three-fifths of the sum of six millions of dollars, proposed to be added to the company's capital stock, and to give

authority to the company to subscribe on its own part the other two-fifths of this additional capital with certain conditions annexed. But the legislature preferred to authorize the company to borrow on the credit of the corporate funds, the sum of one million five hundred thousand dollars, provided the loan could be negotiated at an interest not exceeding six per centum per annum, payable at some place either in the United States or in Europe, the faith of the state being pledged as guarantee for the punctual payment of the interest, and the redemption of the principal, according to the terms of the loan. This was the act, passed March 23, 1839, under which the first guaranteed bonds were issued. The president, in laying it before the stockholders, expressed his sincere regret at the failure of the proposition submitted by the company, because, as he stated, it was introducing the policy of operating exclusively on borrowed funds, at an earlier period than was desirable by the company. Nevertheless, in view as well of the evils which its rejection would produce, as of the benefits which its adoption would confer (among which was, that the judicious and economical expenditure of the amount of the loan would carry the work into the heart of the Valley of Virginia), he recommended to the stockholders to give their sanction to all the provisions of the act—and the act was accordingly accepted and adopted as an amendment of their charter. No mortgage or other specific lien was at that time required of the company.

About a year thereafter, a gentleman of South Carolina, of well known abilities and of high character, being about to proceed to Europe to negotiate a loan for the republic of Texas, the company entrusted to him, under suitable instructions, an amount of five per cent. sterling bonds, equivalent to $550,000. This gentleman visited various cities in Europe, earnestly endeavoring to effect a sale of the bonds; he pledged a part of them with a house in London, for a small advance, which was duly remitted; and finally effected a credit with a house in Amsterdam, on an hypothecation of the remainder

of the bonds, but applied the money chiefly to the uses of the Texan government, under the expectation, as he afterwards declared, that the misappropriation would be of very short duration, and that it would be rectified from the proceeds of the Texan negotiations.

Immediately upon the receipt of these embarrassing tidings in Richmond, they were communicated by the president and directors to the general assembly, then in session, accompanied by a memorial and all the documents and correspondence relating to the negotiation; and the committee to which they were referred, after a careful and deliberate investigation, by an almost unanimous vote, reported a bill in conformity to the prayer of the petition.

The two houses of assembly, however, did not concur in the views of the committee. The bill as reported encountered an active and violent opposition; and on the 25th March, 1842, an act was passed authorizing a loan to the company of $250,000, in certificates of state stock, for the purpose chiefly of redeeming the guaranteed bonds which had been pledged in London and hypothecated in Amsterdam. But the act required——

First—That the company should execute to the Board of public works a mortgage or other specific lien on all their property, real and personal, and upon the net income of all their tolls and receipts:

1. To secure the payment of the annuity to the old James river company;

2. To secure the state from loss by reason of her responsibility for the guaranteed loan under the act of March, 1839;

3. To secure the payment semi-annually of the interest, and repayment of the principal of the certificates then authorized to be issued.

Second—That when redeemed, the company should return to the treasurer of the commonwealth one hundred thousand dollars of the guaranteed bonds, to be by him canceled.

Third—That the company, until authorized by the legislature, should enter into no new contract or engagement for work to be done on the line of its improvement.

Fourth—That the certificates of stock authorized to be issued under this act should not be at any time disposed of at less than their par value, without the consent of the Board of public works, that the company should be prohibited from making any new issues or reissues of scrip or post notes; and that instead of one proxy to represent the stock of the commonwealth in the annual or other meetings of the stockholders of the company, there should be three proxies, appointed by the Board of public works, who were instructed to propose and vote for a reduction of at least ten per cent. in the salaries and compensation of all the officers of the company, except those whose salary did not exceed $500.

I need go but one step further to account for a paralyzed credit. This will be found in an act passed March 24th, 1843, entitled an act authorizing the company to increase their tolls, and for other purposes, the sixth section of which is in these words:

"6. Be it further enacted, That if the said company shall make default in the payment of any money now advanced, or hereafter advanced for the payment of the interest on the guaranteed debt of the company by the commonwealth, or any installment of the annuity to the old James river company now in arrear, or which may hereafter become in arrear, when payment thereof shall be required by the general assembly, or the Board of public works, it shall be lawful for the Board of public works to recover the sum or sums so due, with lawful interest thereon, by motion in the name of the common-

wealth, on ten days' notice, in any court having jurisdiction of motions in behalf of the commonwealth, against public defaulters. And to enforce the execution of any judgment recovered on such motion, the court in which such judgment shall have been recovered, may, on application of the commonwealth, direct a writ of sequestration to issue against the goods, chattels, lands and revenues of said company, the execution of which writ shall be under the control of the court. On the levy of the said writ, the revenues of the said company thus sequestrated shall be applied, first to support and preserve the works of the company—second, to the payment of the interest on the guaranteed debt of the company, or installments of the annuity to the old James river company, which may be in arrear during the pendency of the writ—and finally to pay the judgment, interest and costs. The sequestration shall continue until these objects are accomplished. Nothing in this act shall be construed to waive or impair the right of the commonwealth to enforce the mortgage executed in pursuance of the provisions of the act of assembly, passed March twenty-fifth, eighteen hundred and forty-two."

This enactment which was required to be adopted, and was adopted, as an amendment of the charter, was substantially repeated in the second section of an act, passed February 21st, 1845, entitled an act for the relief of the company.

I now submit to you the following statement, showing the amount invested in the works and property of the company, from its organization in May, 1835, to the 30th September, 1859:

COST OF CONSTRUCTION:

Richmond dock	244,721.98	
Tide water connection	606,590.14	
Canal	8,934,783.49	
South side connections	162,685.09	
Rivanna connection	115,043.24	
North River improvement	81,011.95	
Blue Ridge turnpike road	9,273.80	
Kanawha turnpike road	192,874.78	
Kanawha river improvement	67,011.66	
		10,413,996.13

COST OF REPAIRS AND MAINTENANCE:

Richmond dock	66,559.06	
Tide water connection	5,030.44	
Canal	1,843,069.53	
Blue Ridge canal, turnpike and ferry	35,121.49	
Kanawha turnpike road	216,326.52	
Kanawha river	95,237.87	
		2,261,344.91

GENERAL CHARGES:

Dividend on stock	11,599.59	
Annuity to old James river company.	399,000.00	
Interest on debt to the state	736,524.01	
Interest on guaranteed debt	1,878,980.71	
Interest and sinking fund on North river bonds	67,390.40	
Interest and discount on temporary loans.	82,502.13	
Expenses of the general administration of the company	162,751.19	
Loss by General James Hamilton....	63,820.45	
Loss by notes and securities received in satisfaction of stock subscriptions.	4,623.57	
		3,407,192.05
Total expenditure of every kind		16,082,533.09

CAPITAL SUBSCRIBED:

By the commonwealth	3,000,000.00	
By individuals 2,000,000.00		
Less amount uncollected. 68,712.89		
	1,931,287.11	
Debt without interest		4,931,287.11
		11,151,245.98

CAPITAL BORROWED:

From the commonwealth	3,351,784.99	
From guaranteed bonds	2,260,000.00	
From banks and individuals.....	394,674.68	
From post notes	3,222.69	
Debt bearing interest		6,009,682.36
Income invested		5,141,563.62

DERIVED THUS:

From tolls, rents, penalties and fees..	5,065,655.54	
From sales of real estate	28,484.46	
From premium and interest on bonds and state stock	57,710.60	
From insurance	10,000.00	
		5,161,850.60
Balance 1st October, 1859		$ 20,286.98

The indebtedness of the company is as follows:

1. To the state of Virginia, for state stock and money loaned under successive acts of the legislature, to wit:

25th March, 1842	250,000.00
21st February, 1845	268,645.33
18th December, 1846	57,559.36
1st March, 1847	1,236,000.00
25th January, 1850	110,000.00
5th June, 1852	120,000.00
7th January, 1853	67,770.00
2nd March, 1853	640,000.00
29th March, 1853	70,000.00
3rd March, 1854	60,000.00
19th January, 1856	135,070.80
15th March, 1856	67,350.90
22d December, 1857	269,388.60
Aggregate	$3,351,784.99

On nearly the whole of this debt there is an arrearage of several years' interest.

2. To the holders of bonds, issued by the company and guaranteed by the state of Virginia, under successive acts of the legislature, to wit:

23d March, 1839	1,400,000.00
9th March, 1849	350,000.00
12th March, 1849	150,000.00
15th March, 1850	360,000.00
Aggregate	$2,260,000.00

These bonds are irredeemable for a given number of years from their date, and then payable at the pleasure of the company, except those issued under the authority of the act of the 9th March, 1849, which are payable 25 years from their date, or at any time within that period, at the pleasure of the company, on giving six months' notice to the holders thereof. The semi-annual installment of interest which became due on these bonds, on the 1st day of July last, is unpaid.

3. To the stockholders of the old James river company a perpetual annuity of $21,000 guaranteed by the state of Virginia, under the 21st section of the act of the 16th March, 1832. This sum, payable in semi-annual installments, and continuing forever, represents a capital (at 6 per cent. interest) of $350,000.

4. To private and corporate creditors, to whom money is due by obligations of several kinds, to wit:

1. Salaries and wages of officers, agents and employees, for services;

2. Accounts for supplies of clothing, provisions, oil, lumber and other materials, &c.;

3. Bonds for the hire of slaves;

4. Negotiable notes given in settlement of amounts due for services, supplies, hires, &c.;

5. Estimates for work on the New Canton bridge, Bosher's dam, Joshua falls dam, and North river improvement;

6. Bond for money borrowed on account of the Tide water connection;

7. Bonds issued to contractors for work on the third division;

8. Bonds issued to contractors for constructing a canal to supply the city of Lynchburg with water, and for raising the level of the canal at Lynchburg, with a view to an increase of the water power;

9. Bonds issued to contractors for work on the North river improvement;

10. Bond for the purchase of real estate at Lexington, in connection with North river improvement;

11. Eight per cent. bonds, given in exchange for bonds originally issued for work on the third division.

The aggregate of this fourth class of debt, which we will call the "floating debt," was on the first day of October last, $428,932.82.

In addition to the foregoing, certain bonds of the North river navigation company, which were issued prior to the act of 16th March, 1858, authorizing the transfer of the franchises of the North river navigation company to the James river and Kanawha company, have been guaranteed by this company under the authority of an act of the general assembly, passed March 9th, 1853. In pursuance of the last mentioned act, agreements have been entered into between the two companies, whereby the James river and Kanawha company has pledged the tolls to be reecived by it upon the tonnage passing to and from the improvement of the North river navigation company, over and above the sum of $5,000, as security for the payment of the interest and redemption of the principal of the loan. A trustee has been appointed to receive and apply the tolls so pledged. The whole amount of bonds issued is $200,000; on which 6 per cent. interest, and 5 per cent. as a sinking fund (making $22,000), are annually paid in semi-annual installments; but the trustee having invested the sinking fund and the semi-annual interest upon the same in these bonds, there is now outstanding held by others than himself, only the sum of $160,378.

To secure the debts due to the state, and the debts guaranteed by the state, and the annuity to the old James river company, mortgages have been executed by the company to the Board of public works as follows:

One dated 9th May, 1842,
One dated 28th June, 1847,
One dated 27th February, 1851,
One dated 7th April, 1851,
One dated 30th April, 1853,
One dated 30th June, 1853,
One dated 9th March, 1854.

And deeds of trust have been given as follows:

One dated 14th February, 1856,
One dated 1st February 1858.

These indentures convey all the property, real and personal, of the company, with all and singular the rights, privileges and appurtenances thereto belonging, and all the rents, issues and profits, and especially the tolls which may be derived therefrom; but the deeds of mortgage contain the proviso, that until the mortgages be foreclosed, the company, their officers, agents and servants may remain in the undisturbed use and possession of the property, may collect and receive the tolls and other income thereof, and may defray therefrom the necessary charges for the repair, support and management of their canal and other works, and for the administration of the company, before applying any part to the payment of the annuity, interest or principal intended to be secured. And the deeds of trust contain the proviso that the trustee shall not have the right to sell, except upon being required so to do by an act of the general assembly, prescribing the manner and terms of sale, and the time of previous notice.

It is proper that I should mention also the existence of several suits against the company for claims, the justice of which is denied, and which are therefore resisted. The most important of these are ——

1. A case from the county of Kanawha, involving a judgment for $5,400; to which a writ of supersedeas has been allowed by the court of appeals.

2. A case from the county of Amherst, involving a judgment for $3,363.20; which has been sent back by the court of appeals for a new trial, upon principles favorable to the company. A second case of the same nature is depending and undetermined in the circuit court of the same county.

3. A case from the county of Fluvanna, involving a judgment for $2,000; from which the company means to appeal.

Supersedeas bonds have been or will be given in these and other cases.

Two suits have been instituted in the circuit court for the district of Columbia, the object of which is to recover, out of the funds to be paid by the government of the United States to the creditors to the late republic of Texas, the sum of $98,-104.68, with interest on $63,820.45, part thereof, from the 12th day of August, 1852. Injunction bonds have been given in these two cases.

When the work upon the third division was suspended for the want of means, in December, 1856, the contracts were closed and liquidated damages paid; but the contractors reserved to themselves the right to resume operations under their original contracts, whenever the company should decide to go on with the work of construction, provided they elect to do so within thirty days after notice to them respectively of such decision. Fifteen miles of this division of the canal, except the light section work, and the farm bridges upon it, were put under contract for construction in August, 1853. The estimated cost of the work thus let to contract was $815,-188; the amount of work that has been done is $374,170—leaving the amount remaining to be done, estimated at $441,018.

On other portions of the line, there are existing contracts as follows:

1. For the completion of the North river improvement.
2. For the reconstruction of Bosher's dam.
3. For the reconstruction of the Joshua falls dam.
4. For completing the raising of the Lynchburg level, including the guard bank on Daniel's Island.

The aggregate estimated cost of these several improvements is (approximately) $123,333.

There are a number of exisiting contracts for the supply of water power to milling and manufacturing establishments upon the line of the canal. The right of the lessee to the use of the water is subservient to the navigation in all cases but two—one at Richmond, the other at Lynchburg. The amount receivable from this source at present is about $10,000 per annum. Some years ago, the chief engineer estimated that the revenue from the sale of water at Richmond alone would in time be equal to the interest on a capital of two millions of dollars. I think it highly probable, that such an extent of water power, in positions so eminently advantageous, as our line affords, is not to be found elsewhere in the United States.

The number of officers and agents at this time in the service of the company, is as follows:

The president,
Six directors,
The secretary,
One book keeper,
One clerk,

The president pro tem. of the Kanawha board,
Four directors of the Kanawha board,
The secretary of the Kanawha board,
The chief engineer,

Two assistant engineers
Two superintendents of repairs,
Three toll gatherers on the canal,
Three toll gatherers' clerks,
Three inspectors of boats,
Ninety-eight lock keepers,
One distributing agent,
Two master masons,
Four master carpenters,
Six overseers,
One ferryman,
One collector on the dock,
Two collectors on the Kanawha river,
Four bridge gate keepers,
Two turnpike agents,
Thirteen turnpike gate keepers,
One patrol.

Whole number of officers and agents, one hundred and sixty-five, who may receive an annual compensation of $55,746.

There are of course, in addition to these, a number of subordinate mechanics and laborers employed in the various operations of the company.

In regard to the charter, about which you enquire particularly, it would be impossible for me, without great labor, to furnish you a copy which would be either useful or intelligible. The James river and Kanawha company are the successors of both the James river company and the Richmond dock company. The act incorporating the James river company was passed at the "October session, 1784"; since which time other acts and parts of acts relating to that company have been passed, to the number of sixty-eight. The act incorporating the Richmond dock company was passed February 19, 1816;

since which time acts and parts of acts relating to that company have been passed, to the number of eleven. The act incorporating the James river and Kanawha company was passed March 16, 1832; since which time acts and parts of acts relating to the company have been passed, to the number of eighty-three.

By their acceptance of the conditions prescribed by the general assembly in an act passed March 2d, 1853, the James river and Kanawha company became "subject to the provisions of the Code of Virginia, so far as they relate to internal improvement and joint stock companies." Under the provisions of the Code, the charter may now be altered or modified by any future legislature, as may seem to it proper, except that no law shall be passed for taking from the company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in chapter sixty-one.

The twenty-seventh section of the act incorporating the stockholders of the James river and Kanawha company provided, that if the works required of the company were not finished within twelve years after the first general meeting of the stockholders, then their charter should be forfeited, and all the works of the company, with the land on which they are situated, and all the rights, privileges and immunities of the company should be vested in the James river company (as then existing) for the benefit of the commonwealth; and in that event the James river company was to be regarded as the successor of the James river and Kanawha company, but not to be liable for any debts contracted by them, or entitled to any part of their personal property. By an act passed March 1st, 1847, the time limited for the completion of the works of the company was extended to the 25th May, 1859.

The Code (chapter 61, section 31) contains a general provision applicable to any company which shall fail to commence and complete its works within the time prescribed by its act of incorporation.

It is not for me to determine how far the legislature would be justified in taking advantage of the clause of forfeiture in the charter of the James river and Kanawha company. Mr. Cabell, the first president, in his supplement before referred to, considers the question in an exceedingly interesting and earnest manner, recalling to recollection the position in which the improvement stood, and the light in which it seemed to be regarded by the state, at the period of the adoption of the new charter. Replying to the suggestion, that the improvement was a mere trust confided to the present company, and that the period for the execution of the trust was about to expire, he states (p. 752), "I can only declare it as my solemn conviction, that if such doctrine had been advanced, and had been respectably maintained at the period of the adoption of the charter, it would have been fatal to the subscription, and the company would not have been formed." Again (p. 759), "not only did the legislative and executive departments of the Government thus actively and avowedly encourage the citizens of Virginia to come forward and support the new scheme of improvement, but the whole course of the proceedings, and the whole history of the period bear the most ample testimony to the general expectation then entertained, that the enterprise in which they were invited to embark millions of money, was to be a manly, dignfied and permanent effort, and that the charter about to be consummated would, in the event of no act of malfeasance on the part of the company, be, in point of fact, a perpetual grant." And again (p. 762), "I repeat that I believe that it was the general, if not the universal expectation, at the period of the enactment of the charter, that the system then proposed to be adopted, if carried into execution, was not to be changed or abandoned for slight or transitory causes, and that, in the event of no act of malfeasance being committed on the part of the company, the stockholders might be fully persuaded that the legislature would always be too just and too magnanimous to regard the chartered privileges in any other light than in the nature of a perpetual grant. Believing

sincerely that such were truly the intentions of the general assembly, I did not hesitate in the course of numerous public addresses to the people of the counties on the line, delivered in the course of the years 1833 and 1834, to treat with contempt, indignation and scorn, the idea that the legislature ever would wield the power conferred by the forfeiture clause in the charter for any other end than to secure integrity and good faith on the part of the company, with a view to the ultimate consumation of the scheme."

The forfeiture of a charter differs, I believe, from the expiration of a charter. In the latter case, there is an unqualified limitation, depending upon the lapse of time, so that the corporate powers and obligations cease on a given day, unless otherwise specially provided, as of a bank, which may collect debts, &c., after the expiration of its charter; but in the former case, limitation or forfeiture depends upon the performance of a condition, which there may have been good and sufficient reason for not complying with. Hence, I am advised, our courts hold that the franchises of a corporation cannot be forfeited without a judgment, either on scire facias, or quo warranto; nor can real estate conveyed to a corporation be divested by non-user alone, without a judicial sentence. In other words, the forfeiture must be ascertained by the sentence of a competent court in a proper proceeding for the purpose.

Should an action be instituted to enforce a repeal of the charter, or dissolution of the body, in the case of the James river and Kanawha company, it would not be difficult I think to adduce many extenuating circumstances. There is indeed nothing in the history of this company, of which I am aware, to cause just apprehension that proceedings will be instituted to enforce a repeal of the charter. The corporation has been guilty of no willful abuse or improper neglect; there has been no misapplication of the powers entrusted to it—no omission to comply with any condition which it was in its power to perform—nothing producing, or having a tendency to produce

mischievous consequences to anyone. So far from willful nonfeasances, scarcely a session has elapsed that the company has not besieged the legislature with applications to enable it to comply with the main condition of the charter. If ever there has been a stretch of authority, it has been toward the great end and design of the charter—the vigorous prosecution, early completion, and permanent maintenance and good order of the improvemet. The whole capital has been expended honestly, if not in all cases judiciously. But the errors or administration commonly alleged, have been long since excused by the legislature itself. So far as I can perceive, no interest of the state would be promoted by the dissolution—no existing danger to the community requires it—it is not pretended that stockholders more zealous or more patriotic could be found than those now associated with the state—in short, nothing can be urged against the company except insolvency—and that, resulting in great degree, as has been partially shown, from legislative action, against which the company protested at the time. Admitting, however, the forfeiture incurred, the legislature may easily by grant revive or renovate the old corporation with the old corporators.

There is an act of assembly, of which I feel it my duty likewise to apprise you, entitled "an act to make investments of the commonwealth more productive, by enforcing the payment of interest and sinking fund on loans to internal improvement companies; of dividends on preferred stock, and the interest on the bonds of such companies guaranteed by the state," passed March 27, 1858. [See Acts of Assembly 1857-58, chapter 7, page 6].

In the case of the James river and Kanawha company, the president and directors have done nothing but what they were authorized and required by the legislature and their mortgages to do—that is to say, they have applied the revenue first to the payment of the current expenses of the administration of the company, and the repairs of the improvement. They consider themselves therefore fully within the exceptional clause of the

second section of the act, which is in these words: "But so much of the revenue of any company as may have been pledged, with the express assent of the general assembly, to the payment of any other debt, in preference to the debt to the state, shall not be included in the gross revenue hereinbefore mentioned." Moreover, the board consider, there was a condonation by the legislature up to the last mortgage or deed of trust given; the legislature having then recognized the existing state of things, and made provision for it. Nevertheless, I am informed that the auditor of public accounts has notified the attorney general of the failure of the company to make payments into the treasury in the cases and manner named in the second section of the act, but so far as I am apprised, the attorney general has not yet moved for judgment against the company.

I have thus, as minutely and particularly as you seemed to desire, given you such a narration of the history and affairs of the company, as I suppose sufficient to enable you to comprehend the present condition and future prospects of this great improvement. You have seen the early beginning of the scheme under the immediate auspices of the illustrious father of his country. You have seen how much was accomplished in its prosecution under the auspices of the state. You have seen how much, I should rather say, how little has been accomplished under the auspices of the state's successor, the present company. Should this view have brought you to the same conclusions with myself, you will find it difficult to understand how Virginia could have so long permitted such an improvement to remain incomplete. To me, I confess it is amazing, that the people of the state have not years ago sent up their delegates to the general assembly, with instructions to employ all the means, and concentrate all the energies at their command for the accomplishment, in the shortest possible time, of an enterprise, which when completed, will pour a tide of trade and commerce into the towns and cities and seaports of the state, the richness of which, I verily believe, no man can esti-

mate. While I may be permitted, as a son of Virginia, to bewail this great remissness, as I conceive it to be, on her part, my present purpose is, however, to deal with things existing rather than with things past.

Having in my letter to you of the 8th of September last, submitted several inquiries, with the view to elicit proposals from which I might select, I beg leave now particularly to call your attention to the last of those enquiries, and to suggest that I think an arrangement might be made upon the basis therein indicated, with mutual advantage to yourselves and the company.

The scheme is briefly this:

I value the works and property of the company at....,		$10,000,000
And propose that the present stockholders shall contribute them at that valuation.		
The engineer estimates the cost of completing the improvement at	$13,000,000	
And estimating five years as the time necessary for completion, there should be allowed an interest account of, say....	2,000,000	
I propose then that you shall undertake as contractors to complete the improvement, at prices to be agreed upon, you receiving your pay in stock, which may amount to, say		15,000,000
		$25,000,000

On which, if so much, dividends will be declared and paid in proportion to the amount of stock held by the parties respectively.

What are the inducements for you to make such an arrangement?

First—As I understand, you are the owners and possessors of three hundred thousand acres of lands up the waters of the Guyandotte, the Tug fork of Big Sandy and branches of the Great Kanawha rivers—being a part of the lands formerly belonging to Col. James Swan, which by an act of the general assembly, passed in the year 1833, were vested in J. P. Dumas, curator, for the benefit of Colonel Swan's creditors, and have now been confirmed to you and your associates by the decree of a competent court, from which no appeal has been taken.

These lands abound in minerals, unequaled, it is believed, by any in the world, in variety, extent and value, and particularly in bituminous, splint and cannel coals, which as yet remain almost literally undisturbed. Who can estimate the value of such a domain, this improvement being completed? In my deliberate judgment, you and your associates would, in that case, be no contemptible rivals of the Bourse or the Credit Mobilier of your own country.

Secondly—As contractors, having the control of large means, and therefore able to command labor, supplies, and all the appliances requisite to conducting an enterprise with vigor, skill and judgment, you might expect to realize, under what we are accustomed to regard ordinary cash prices in this country, a profit in itself fully remunerative.

Thirdly—No well informed person can doubt what would be the dividends upon a judicious outlay of the capital necessary to complete this improvement in a durable manner. Hence, your profits in this particular would probably exceed those of any investment you could expect to make in Europe;

and therefore, the acquisition of stock, even in this aspect, ought to be acceptable and satisfactory.

I will not conceal my earnest desire to complete an arrangement with you on terms which shall be satisfactory to my company and the legislature. Of course I could expect you to do nothing, in the present embarrassed condition of the company, without the full concurrence of the legislature—and therefore I must ask you to assume, as the basis of a final arrangement, that the legislature, in order to obtain for the state the advantages which it is admitted would result from the completion of the improvement, will relieve the company of every existing lien and liability, so far, at least, as you and your interests may be affected thereby.

On the other hand, it is assumed that you will satisfy the legislature of your ability to comply with any contract you may make with the company.

Why should the ability be wanting? If the financial notabilities of your country, men whose personnel and means alike command the public confidence, and who are known in every money market, and are accustomed to look abroad through the world for opportunities of investment, can be made to understand the facts of the case, I see no reason why, with our stock in hand, you should not be able to obtain advances to any extent which might be called for by possible deficiency on your part and the exigency of the work. Why, indeed, should not the emperor of your great nation see in such a contract, coupled with the relations which unhappily exist between the northern and southern states of this Union, an opportunity of which he might avail himself, as by a coup d'etat, to establish direct trade between the southern states and France? France! once our ally, having no sympathy now with Exeter hall, or its mischievous doings, and ready, as she is able, to quadruple the current exchange of values between herself and the south, the southwest and the west of this wonderfully productive

country. France! in whose magnificent capital you find today, a decisive mark of our regard, in the bust of the noble marquis, which was voted by the commonwealth of Virginia to the city of Paris at the very moment that Washington was inaugurating the great work which we are called upon to complete.

I submit with deference these views and suggestions, and soliciting your favorable consideration of them.

Remain, dear sir,

With great respect,

Your very obedient servant,

THOMAS H. ELLIS,
President.

To Mr. Ernest de Bellot des Minieres, &c. &c. &c.

THE MASTER: You had better follow that right up with the next letter that follows it, which relates to the same subject matter.

MR. HOLT: And also a letter signed by Thomas H. Ellis, president, addressed to the same party, dated Richmond, December 3, 1859, and found at pages 694 to 696, inclusive, of this same Volume 5.

THE MASTER: That relates to the same subject matter, sort of a recapitulation.

MR. HOLT: Yes, sir.

The letter was admitted in evidence and is considered as Defendant's Supplemental Exhibit No. 6.

Defendant's Supplemental Exhibit No. 6 is as follows:

Office James River and Kanawha Co.

Richmond, Dec. 3, 1859.

Gentlemen,

Under the reservations contained in the 4th resolution which was adopted by the stockholders, at their meeting on the 27th of October last, I respectfully submit to yourselves and your associates the following scheme for the completion of the James river and Kanawha canal:

The present stockholders to contribute their works at the price of		10,000,000
You to complete the improvement, the estimated cost of which is	13,000,000	
Interest to be allowed on the sums advanced by you from time to time for that purpose, which may amount to, say	2,000,000	
		15,000,000
Total cost when completed (estimated).....		$25,000,000
Of which the public share or share of the state of Virginia will be, in shares of stock, at $100 per share	8,000,000	
The private share, exclusive of yours, will be.....	2,000,000	
Your share —— the whole amount of your advances not exceeding	15,000,000	
Total		$25,000,000

You to pay $500,000 (part of the said $15,000,000) for the purpose of relieving the company of its floating debt; of which sum, $250,000 to be paid as soon as a definite agreement shall be signed, and the balance paid in sufficient time to meet the residue of the debt as it becomes due; or, the said balance may be paid at the same time with the first $250,000, if you so prefer. Certificates of stock to be issued for the amount paid at the time of payment.

The company to contract with you for you to execute the work at prices and on terms to be agreed upon, the work to be completed by or before the 4th day of July, 1865—the plan and the mode of executing the work to be exclusively under the control, judgment and discretion of the company—but the prices to be fixed by agreement between the company and yourselves—and in case the company and yourselves should differ, or be unable to fix such prices by agreement, the difference to be decided by arbitrators— one to be selected by the company and one by yourselves, with power in the arbitrators, in case of their disagreement, to call in an umpire, whose award shall be final.

Estimates of the work performed, and materials furnished, to be taken quarterly by the engineers of the company, in the mode provided for in the contract, and interest to be allowed on the quarterly estimates; but twenty per cent. of the said estimates respectively shall be left in the hands of the company until the completion of the work, when the same, with interest, shall be settled for in stock at par upon a final settlement between yourselves and the company.

It is to be understood, nevertheless, that the company reserve to themselves, and are to have the right, in case the commencement of your operations be unreasonably delayed, or after they are commenced shall be neglected, or prosecuted without reasonable diligence, to give notice and rescind the contract between the parties, and treat the same as abandoned on your part; in which case the whole reserved percentage in the hands of the company shall be forfeited.

The balance of the estimates (after deducting the reserved twenty per cent. before mentioned) and the interest upon said balances respectively to be paid from time to time in stock at par, until the aggregate sum, composed of the said balances, with interest, and the reserved sum, with interest, shall reach $15,000,000—if so much be necessary for the completion of the work. But the amount of stock to be held by you, and in regard to which your interests as stockholders shall be regulated, shall be governed by the amount of your payments, advances and estimates, with the accrued interest, for which stock at par shall be issued, as afore mentioned. All amounts beyond the said sum of $15,000,000, if any, to constitute debt from the company to you, on which interest shall be paid before dividends. If preferred by you the aggregate of stock may be limited to $8,000,000; all beyond that sum being debt from the company to you, on which interest shall be similarly paid. But your rights and interests as stockholders, in case of such limitation, to be dismissed in conformity therewith.

Dividends out of the net profits of the work to be payable semi-annually, in proportion to the amount of stock held, but not to exceed the per centum allowed by the charter.

When $500,000 shall have been paid in cash, your vote in a meeting of the stockholders shall be one-fourth of the vote given in any election, or on any question, by others than the state and yourselves; when the improvement has been completed to Covington, your vote shall be one-half of the vote given by such others; and when the entire improvement has been completed, your vote shall be two-thirds of the vote given by such others. The vote of the state in respect of her present stock, which amounts to $3,000,000, to remain as at present, to wit: not to exceed two-thirds of the whole number of votes given in the same election, or on the same question, by others than yourselves. In respect of her additional $5,000,000, the vote of the state to be one-third of the vote given by yourselves. This provision is based upon the expectation that you will be stockholders to the extent of $15,000,000. In case of

your being stockholders for a less amount, your vote will be proportionately diminished, observing the same ratio in regard to other votes as results from the proportion above indicated on the supposition that your stock would be equal to $15,000,000.

In the event of your assigning any shares of your stock, the votes of your assignees shall be ratable in proportion to their respective amounts of stock—the whole of your and their votes together not to exceed the vote which you could give if there were no assignment.

Such books shall be kept as may be necessary to distinguish this particular stock.

This scheme presupposes that the state will convert into stock the whole debt of the company, other than the floating debt, and will surrender the existing liens.

I have the honor to be, gentlemen,

With much consideration,

Your obedient servant,

THOMAS H. ELLIS,
President.

Messrs. Ernest de Bellot des Minieres and Theodore Olivari, &c. &c.

Q. I will ask you, Mr. Hillman, whether or not this letter first introduced is a part of the report of the president to the stockholders of the James River and Kanawha Company.

A. Yes, sir, it is.

THE MASTER: What does he say it is, a part of the report of the president?

MR. HOLT: It is a part of the report of the president to the stockholders, as I understand it.

Q. Where did you get the evidence of that, Mr. Hillman?

A. He starts out with his report in the beginning, and goes right through, making a long statement to his stockholders, and shows how far the negotiations with the French Syndicate have gone.

Q. Does he exhibit this letter as a part of his report, does he make it a part of his report?

A. I will look at the document.

Q. Does he, in his report, call attention to that letter in any way, manner, shape or form?

A. Yes, sir, he does.

Q. Let me see where it is, please.

A. Page 652 of this record.

Q. What does he say at that point?

THE MASTER: Read it right into the record.

Q. Read it right into the record.

A. (Reading):

"Third—Under your request that I would continue my correspondence with Mr. Bellot des Minieres, for the purpose of negotiating an arrangement for the completion of the Canal, on terms to be approved by the Board of Directors, and subject to the sanction of the Legislature, I addressed a letter to him, dated the 21st of November, giving such information in regard to the affairs of the Company as he had previously desired of me for the use of his associates in France. Mr. Bellot des Minieres, who for more than a year past has resided in Charleston, Kanawha, attending to a large

landed interest, and studying the mineral, industrial and agricultural resources of that portion of our State, having seen in the published reports of your last annual meeting the resolution relating to himself, came to Richmond with Mr. Olivari, one of his co-partners, then recently arrived from Europe, and the two together indicated their earnest desire to receive without delay an expression of my preference and views on the propositions originally submitted by Mr. Bellot des Minieres. * * * * A copy of the two letters referred to, and of the bill to amend the charter of the Company, are herewith submitted (Nos. 3, 4 and 5)."

The numbers 3, 4 and 5 refer to the index on page 659 of this Volume 5 of the James River and Kanawha reports, wherein the documents accompanying the proceedings of the stockholders at their adjourned meeting in January are listed and numbered.

Q. Well, is the letter as offered by me one of the letters referred to in that report?

A. Yes, sir, it is No. 3.

MR. HOLT: You gentlemen may inquire of him.

MR. HARRISON: We have no questions to ask.

By the Master:

Q. Is it your understanding of this estimate of $10,000,000, that that is an estimate that I would be justified in taking as the basis of valuing the stock?

A. No, sir.

Q. The report shows the contrary, does it not, that is the letter of Mr. des Minieres? That is simply a basis on which they were proposing to put the improvement in on the basis of a new capitalization, is not that what it is?

A. Yes, sir, it is the value of the stock for the purposes of the completion of the canal.

Q. Well, they were proposing to put the property in on a proposed stock organization basis at that valuation?

A. Yes, sir.

Q. It does not undertake to be a statement of the net value of the property to the stockholders even?

A. I do not so understand it.

Q. They were to contribute the property on the basis of $10,000,000, and the des Minieres Company were to put in some additional construction on a basis of $15,000,000, and stock to be issued on that basis?

A. Yes, sir.

Q. I have not read this through carefully enough to see—does the report show what the indebtedness of the Company was at that time? I have not gone through it enough to be able to tell that.

A. I am not familiar enough to say.

MR. HOLT: What was the date of that report?

THE MASTER: 1859, November 21, 1859. That is the date of the letter.

Q. When did you first see this James River and Kanawha report that we have in here, that is printed?

A. After Mr. Potter's exhibits had been submitted to me for revision—not revision, for review.

Q. Since the last hearing you mean?

A. Yes, sir.

Q. And prior to that you had not seen it?

A. No, sir.

Q. Well, were you present when Mr. Anderson made his statement purporting to be extracts from this report?

A. No, sir.

Q. Giving some computations which were predicated upon this report?

A. No, sir, I was not present. I was in Richmond——

Q. Were you not at the hearing?

A. No, sir, I was not at the hearing.

Q. Don't you remember my asking him the question as to what the fixed charges were, and his stating that he had not any information, and my stating that we would look to you for that? I will turn to the record and see what did occur there.

MR. LILLY: Did not Mr. Anderson say that he did not know——

THE MASTER: I will read just what Mr. Anderson said. I have a little curiosity to see just what he did say about this. I know I tried to find out what the fixed charges were from somebody, and did not succeed in getting it.

MR. HOLT: And with sort of a promise that we would furnish them through Mr. Hillman, and my recollection is that Mr. Hillman was in Chicago at the time. I may be wrong about it.

THE MASTER: I do not think so, I think he was present and heard the statement.

MR. LILLY: You will find his direct examination on page 721.

THE MASTER: No, it is in the cross-examination.

MR. LILLY: That begins at page 749.

Q. Have you ever looked up Mr. Anderson's testimony with reference to this James River and Kanawha report that is now printed in the record?

A. I do not think that I have read Mr. Anderson's testimony.

Q. Here is the question—that is on page 745:

> "THE MASTER: Do you know what the interest charges were upon the indebtedness of the Canal Company for that year?
>
> "A. I am not informed."

Now it turns out that the table from which he got his figures contained all that information, and right close by the figures from which he must have made his extract. Then I say:

> "THE MASTER: We will get that from Mr. Hillman."

Now was your attention ever called to the fact that I wanted that information?

> MR. HOLT: Is there anything to indicate that Mr. Hillman was present at that hearing?
>
> THE MASTER: It does not make any difference whether he was or not; I want to know whether his attention was ever called to the fact that I wanted that information that Mr. Anderson did not seem to be able to give.

Q. I want to know if your attention was ever called to the fact that I wanted the information that Mr. Anderson did not seem to be able to give, which he claimed—and he had taken some figures from a tabulation—was your attention ever called to the fact that I wanted that from you?

A. No, sir, not as far as I can recall.

Q. Now, did I call your attention at the last hearing—I would like to see what you understood by this—this is at page 2803 of the transcript:

"THE MASTER: I do not know what Mr. Hillman did, but it is quite evident that I expected Mr. Hillman to get the information and enlighten me."

Now, I had in mind exactly this part of the examination. You were present then?

A. Yes, sir.

Q. (Reading):

"MR. LILLY: I understood he could not get the information.

"THE MASTER: What about that, Mr. Hillman?

"MR. HILLMAN: I found nothing on file that I could determine the points that were asked about, and I notified the counsel and abandoned it."

What did you mean by that answer?

A. I meant that at the time we were looking up the James River and Kanawha Company for the purpose of finding the costs of the Company and its property, the canals and general information concerning it, that I looked over the records and found nothing on the subject, and I so informed the counsel.

Q. Well, did you understand what I was inquiring about when I asked for this information? I was after the fixed charges in this exhibit, or in this original record from which Mr. Anderson had made some extracts, and I had called attention to it in the original record and suggested that you get it. And here at the argument I asked you this:

"I do not know what Mr. Hillman did, but it is quite evident that I expected Mr. Hillman to get the information and enlighten me."

Now, I meant that information, did you understand me to mean it, or what did you understand me to mean?

A. I understood you——

Q. What information did you think I was after?

A. I understood that you wanted that information.

Q. In relation to these fixed charges?

A. In relation to these fixed charges.

Q. Now what do you say to that?

A. I said that I had looked and not found any records. Not having found any records of any character at that time, I, of course, answered the general proposition.

Q. Now, am I to understand that when you started to look for records to which Mr. Anderson referred, that you did not make any inquiry from him as to the source from which he got his information, is that the character of an investigation you made? Answer that.

A. Yes.

Q. When you came to investigate what Mr. Anderson had done, in answer to an inquiry I put to you, you did not take pains to inquire from Mr. Anderson the source from which he got his information?

A. Yes, sir, because I did not know that Mr. Anderson had——

Q. And you gave me to understand that there was not any information obtainable, that without having inquired from Mr. Anderson the source of his information, you assumed that there was not any obtainable, is that what you did?

A. No, sir, not exactly.

Q. Let me read what you did. Wait a minute. I do not like to be bothered in digging this stuff up in this sort of way. You said:

> "I found nothing on file that I could determine the points that were asked about, and I notified the counsel and abandoned it."

Now you tell me that you did not even ask Mr. Anderson the source from which he got his information. You knew that I wanted information in relation to that particular point, and you did not ask Mr. Anderson where he got his information; and yet you tell me that you could not find the information, and you notified the counsel and abandoned it. Is that what you mean? Is that the way you made the investigation?

A. That is the way I made the investigation. Will you allow me to explain it?

Q. I will read the rest, and then you can explain it.

"THE MASTER: Were there any books of the Company?

"MR. HILLMAN: I did not find any anywhere. I do not mean that I wilfully abandoned the search, your Honor, but I had to let it go."

And you did not even ask Mr. Anderson what books he relied on, is that what you mean?

A. Yes, sir, except——

MR. HOLT: Well, if you will pardon me——

Q. (Reading):

"THE MASTER: Of course the canal may have been worth a decent sum of money in 1860, and it may not have been worth anything in 1880. I presume, when you come right down to it, that modern methods of transportation gradually eliminated this canal. I presume likely that might have been the fact. So that you might have a condition in 1880 that would not obtain at all in 1860.

"MR. HOLT: Exactly, I believe you will find now that the bond issue——

"THE MASTER: Let me ask this question. Are the books of the James River and Kanawha in existence anywhere?

"MR. HILLMAN: I do not think there are any such books in existence. As I said, I tried to find them and was unable to find any trace of them."

Now the effort you say you made was, you did not even ask Mr. Anderson what he relied on as a basis of his statement in making that investigation, and led me to understand—what do you mean by that?

A. I mean that I did not know that Anderson had testified on the point.

Q. You tell me right now that you knew what I was looking for. You must have known from somebody what Mr. Anderson testified to, and then you tell me practically that there is nothing in existence that discloses any of these facts.

MR. HOLT: No, your Honor, I think that that is an unfair statement. He does not say that there is nothing in existence; he says he did not find anything. And you ask him if he asked Mr. Anderson. If he knew anything about Anderson at all he knew that Anderson knew nothing about it, as least he so said, and we don't go to people for information who don't know.

THE WITNESS: That was a hearing in this room, your Honor?

THE MASTER: It was at the conclusion of the argument, and it was at the end of that that I insisted that this information that we have here now should be produced if it could be procured. Nobody knew whether it could be procured or not. Counsel on neither side had any information about it at all.

THE WITNESS: That was in the argument in this City?

THE MASTER: Yes.

THE WITNESS: That is what I understood.

THE MASTER: The answer I got from you was that you had looked it over and could not find anything, and then I insisted on these reports being produced.

THE WITNESS: I had looked in Richmond for the reports of the James River and Kanawha Company, and was not able to find any, and based my answer to you on that, that I was not able to find any; and I did not know, nor was my attention called to Mr. Anderson's testimony, that he had such a record and had seen it, and I knew nothing about it.

Q. And you did not know that I was trying to find out what those fixed charges were, is that what you say now?

A. I knew that you were trying to find out the fixed charges; I certainly did.

Q. The fixed charges that Mr. Anderson had no information about, you knew what fixed charges I meant, did you not?

A. I knew that you meant the fixed charges of the James River and Kanawha Company. I did not know that Mr. Anderson was brought into it.

Q. Do you mean to say that you did not know what I was inquiring about when I put this question:

"THE MASTER: I do not know what Mr. Hillman did, but it is quite evident that I expected Mr. Hillman to get the information and enlighten me."

Now, did you know what information I wanted when I put that question to you?

A. Yes, sir, you were after the fixed charges, as well as other information, concerning the James River and Kanawha Company.

Q. The fixed charges stated by Mr. Anderson?

A. I did not know——

Q. Did you know what he had stated up to that time?

A. No, sir, I did not.

Q. Had your attention been called to the fact that I desired that information, by anybody? And if it had not, how did you know what I was inquiring about? If your attention had been called to it by anybody, who called your attention to it, that I wanted that information, the fixed charges that Mr. Anderson claimed he had no information about—who called your attention to that?

A. I knew that you were getting after the fixed charges——

Q. Answer this question, please. Who called your attention to the fact that I wanted information as to the fixed charges, as to which Mr. Anderson said he had no information? Had your attention been called to it?

A. Not as far as I can recall, no.

Q. Well, did you know that I wanted that information, and if you did not know, how could you answer that question intelligently?

A. I do not recall that I knew that you wanted it. I should say no.

Q. That is all.

A. If the matter is as you state there, you have asked for certain information. Having looked for the records, and not being, up to that time, able to find any records, I was perfectly justified in stating that I could not answer that question.

THE MASTER: That is all.

MR. HOLT: Let me give my recollection of this, if there is any point in it.

MR. LILLY: I do not see that it is important enough to create all this discussion anyway.

THE MASTER: I have examined him all I want to.

MR. HOLT: I was not seeking to ask him any questions, Mr. Littlefield.

THE MASTER: I have no objection to your examining him.

MR. HOLT: I say I do not want to ask him, but I want to make a statement about this.

THE MASTER: Yes, certainly.

MR. HOLT: My recollection is that when Anderson was upon the witness stand you asked him the question—he was talking about income, and you asked him the very pertinent question, whether he had any knowledge upon the subject of the fixed charges that had to be met by this Company, and he said he did not, he did not know. Then either Attorney General Lilly or myself volunteered that we would have Mr. Hillman look that up. I think that occurred at Richmond. Now, whether Hillman was present at the time or not, I do not recall, or whether he had gone to Chicago. You know there was an interim there, Mr. Littlefield, when he was away.

THE MASTER: Yes, that is right.

MR. HOLT: Then the matter seems to have dropped out of our minds, out of mine at least, I do not know what was done after that; the investigation was abandoned for some reason, I do not know what. But when we came here to the argument, at the conclusion your Honor brought it up again, and said you would like to know what those fixed charges were, and asked if it were possible to get any information upon the subject about whether or not these books might be in existence somewhere. And we were all of the opinion at that time—I think Mr. Harrison will bear me out in

that—that both sides were of the opinion that no records were on hand or were accessible. You will find that you asked Mr. Harrison something about it there, and he was standing in just about the same dilemma that I was. Hillman was here, but he was going to Chicago after that, he was not going back to Richmond at all; and he did not undertake to make any investigation after that time. And the first knowledge he ever had of this matter that is in here now was when the recent exhibit of Mr. Potter was handed to him. We thought, so far as we were concerned, that we had all the information that there was on that subject. It turns out now that we did not have.

THE MASTER: Suppose I had relied on Mr. Hillman's statement that he made to me at that time, would that have given all this information that we have here now?

MR. HOLT: You did rely upon it as far as it goes. Hillman did not say there was no such material in existence; he simply said that he did not find it, just like Mr. Harrison would have made the same statement, or I would have made it. There was no such information on hand, so far as his knowledge went. Well, that does not say that there is no such information. And, of course, if you wanted to investigate to satisfy your own mind whether there was or not, you would do it independently of a statement of that kind. I could have truthfully said, and perhaps did, that there was no information I had on the subject that I knew of, but that is quite different from saying there is none.

THE MASTER: It is quite different from saying that you had looked the records up and could not find any.

MR. HOLT: He said he had looked for records.

MR. LILLY: And I suppose he did look in all the offices there, the Public Works and auditor's.

MR. HOLT: Had Mr. Potter looked for it?

THE MASTER: Mr. Potter had not been charged with the responsibility of looking for it.

MR. LILLY: Mr. Hillman had to go to Chicago and his people were sick, and he was not down in Richmond, and it was up to Mr. Potter.

THE MASTER: That would have been a very good way to answer the whole thing when I inquired of him; but instead of that he certainly made the impression on my mind that he had been requested to investigate that. My recollection of Mr. Hillman's absence in Chicago is that, as a rule, he was present at practically all of the hearings.

MR. HOLT: No, all of the exhibits practically for the year 1863, I think, were put in in his absence.

MR. LILLY: And the last of 1861.

THE MASTER: However, the impression that he left on my mind was that he had been requested to ascertain this information that Mr. Anderson did not seem to have, and that he had made an investigation, and there was not anything that gave any light on it. If he had not made any such investigation—however, we won't stop to discuss it. I simply wanted to find out what the situation was. The record, as it stood, left the impression on my mind, beyond all question.

MR. HOLT: The point is this, Mr. Littlefield, that we think it is unfair to us and unfair to the witness—you may not mean it, but it puts us in the attitude of deliberately having attempted to deceive the Master

here. I am sure I have withheld nothing from the Master that I know about this case.

THE MASTER: You have not received any intimation from me that you have.

MR. HOLT: I do not mean myself exclusively. It looks as though the intimation on the part of the Master was that we had either, through our witness or personally ourselves, kept from him something. We knew nothing about it.

MR. LILLY: If we had known that, we would have brought it all in at first, because we think it helps our case. And why would he not have brought it in?

THE MASTER: I cannot tell you about that.

MR. LILLY: It impugns a motive without a reason, as far as we can see.

THE MASTER: I am not impugning any motive—I want to say this, that I was very much surprised, after the statement that Mr. Hillman made to me after the close of the last hearing, with what this long exhibit developed.

MR. HOLT: You were not any more surprised than he was.

THE MASTER: If I had taken Mr. Hillman's statement, it never would have been here. But I declined to accept his statement as final, and insisted on this document being found if it could be found. Neither side, as far as the counsel are concerned, had made any effort to examine, themselves. Mr. Anderson produced some extracts from it, and I wanted to see the whole exhibit to ascertain what the facts were in relation to it. If I had rested on Mr. Hillman's statement, it never would have been here at all. There cannot be

any question about that on this record. What Mr. Hillman intended about it, or meant about it, I do not know. But I simply wanted to develop for my own personal satisfaction just exactly what this situation is. I do not think that counsel on either side are subject to any criticism on the matter one way or the other. But I do not quite like the matter being put up to me in that way by Mr. Hillman.

MR. HOLT: In speaking of Mr. Hillman's knowledge of Mr. Anderson's testimony, the Master must bear in mind that we had Mr. Hillman at work in the various offices all the time that anybody else was on the witness stand. I do not think he heard Mr. Anderson's testimony at all. We had to send for him every time we wanted to use him, because he was pressed for time, and out of the room when other people were testifying in the room. Well, we desire to ask no further questions.

THE MASTER: That is on this schedule, you mean?

MR. HOLT: Yes.

MR. HARRISON: We have no questions to ask.

THE MASTER: I thought you had another schedule, the Northwestern Bank. What is the understanding now about this admission that Judge Holt suggested as to the payment in full by the capital stock? This is what you said, at page 2967 of the transcript:

"MR. HOLT: My suggestion to this, it is stipulated by and between the parties to this record that all of the securities mentioned in the Schedules A, B, C, D, E, F, G and H were paid for by Virginia at par in cash prior to the 1st day of January, 1861, except as may affirmatively otherwise appear in this record. That will cover the whole thing."

Is that agreeable?

MR. HARRISON? Yes.

THE MASTER: You do not want that extract put in then?

MR. LILLY: No.

MR. HOLT: We now offer, your Honor, a letter dated at Jeffersonville, October 17th, 1861, by John A. Kelly, cashier, to His Excellency, John Letcher, Governor of Virginia, together with the statement enclosed.

THE MASTER: Is that a report made on oath?

MR. LILLY: Yes.

MR. HOLT: It is a letter, and I am going to follow it with the report. This is a letter dated Jeffersonville, October 17th, 1861, by John A. Kelly, cashier, addressed to His Excellency, John Letcher, Governor of Virginia, found on page 555 of a volume marked Documents, 1861-1862, Part 2, and likewise the accompanying report transmitted with that letter of the condition of the Northwestern Bank of Virginia, found at pages 556 and 557 of the same volume. Also the affidavit attached to said report, and found upon page 558 of said volume.

The paper was admitted in evidence and marked Defendant's Supplemental Exhibit No. 7, December 10th, 1914, C. B.

Defendant's Supplemental Exhibit No. 7 is as follows:

DOCUMENTS—1861 and 62—PART 2.

STATE OF WEST VIRGINIA.

CONDITION OF THE NORTHWESTERN BANK.

Quarterly Statement—October 1861.

Office of Northwestern Bank of Virginia,
Jeffersonville, October 17, 1861.

Sir:

I again enclose you quarterly statement of the condition of this office, being excluded from communicating with parent bank.

Very truly yours,
JOHN A. KELLY, Cashier.

His Excellency JOHN LETCHER,
Governor of Virginia.

Statement of the Condition of the Jeffersonville Branch of the Northwestern Bank of Virginia on the 1st, October, 1861.

Assets:

Bills and notes discounted (all domestic)	$328,042.52
Notes of the parent bank and other branches	8,535.00
Notes of other Virginia state banks	3,032.00
Notes of banks of other states	240.00
Virginia and Confederate States treasury notes	750.00
Checks, etc.	434.66
Specie	52,332.16
Due by other banks to this office	9,530.66
Expenses	30.70
Real estate owned by this office (estimated cash value)	11,815.18
	$414,742.88

NOTE.—$24,000 of the specie reported is a special deposit with the parent bank. A short time before intercourse with the bank was interrupted, Cashier Lamb wrote to this office that the specie was untouched.

Liabilities:

Capital paid in		$164,200.00
Circulation—5s	$152,035.00	
Circulation—10s	52,690.00	
Circulation—20s	880.00	
Circulation—50s	800.00	
		206,405.00
Due by this office to the parent bank		1,796.11
Due by this office to other banks		2.95
Due to depositors		6,469.46
Discount and interest account		2,718.16
Exchange and premium account		44.03
Profit and loss account		33,107.17
		$414,742.88

VIRGINIA—Tazewell County, to wit:

This day John A. Kelly, cashier of the Northwestern Bank of Virginia at Jeffersonville, made oath that he believes the foregoing statement is correct.

Given under my hand this 17th day of October, 1861.

R. B. GILLESPIE, N. P.

MR. HOLT: We likewise offer and ask to have incorporated in the record the report of Chester D. Hubbard, dated at Wheeling, West Virginia, February 23, 1871, certified by J. S. Darst, auditor, under his hand and official seal, on the 26th day of February, 1910, and found at pages 355 to 358 inclusive of the Lilly compilation.

The report was admitted in evidence and is considered as Defendant's Supplemental Exhibit No. 8.

Defendant's Supplemental Exhibit No. 8 is as follows:

REPORT OF HONORABLE CHESTER D. HUBBARD

Wheeling, West Virginia, Feb. 23, 1871.

Hon. W. E. Stevenson, President.

Dear Sir: In accordance with the instructions of the Board of the School Fund in their action of the 15th, I have ascertained and herewith transmit a statement of the stock held by the state in the National Bank of West Virginia at Wheeling, the First National Bank of Wellsburg, and the Parkersburg National Bank, and the different funds to which said stock is credited.

I also proceeded to Wellsburg and exchanged as directed the stock of the Internal Improvement Fund in the First National Bank of Wellsburg, 163 shares, for United States 5-20 coupon bonds (the Bank had no registered bonds) receiving therefor sixteen bonds of $1,000 each and three bonds of $100 each lettered and numbered as follows: $1000 K 134,401, 134,403, 134,404, 134,405, 134,406, 134,407, 134,413, 134,414, 163, 792, G. 142,990, 142,991, 142,981, 142,982, 142,983, 142,-984, 142,985. $100 each I. 177,876, C. 102,938, D. 236,517. These bonds carry the coupons of July 1, 1871, and were issued July 1, 1867, under the act of 1865.

I have sealed the bonds in an envelope writing my name across the seal and labelling them as belonging to the School Fund of West Virginia, and have deposited them as a special deposit in the First National Bank of Wheeling. The bonds can be exchanged for registered bonds by sending them to

Washington. I will attend to it if you desire it to make any other disposition of the bonds you may direct.

The Bank declined to exchange for the stock held in the name of the state, believing that they could not safely do so under section 7, article 8, of the Constitution, besides I was not certain that my authority extended to such an exchange. If I am to make any other disposition of the bonds, please advise me at your earliest convenience.

The stock exchanged at Wellsburg will modify the bond statement to that extent. Very respectfully,

C. D. HUBBARD.

Statement of Stock held by the State of West Virginia in "The National Bank of West Virginia at Wheeling," "The First National Bank of Wellsburg," and "The Parkersburg National Bank," and the different funds to which said stock is credited.

1837—(July 18)—The Commonwealth of Virginia subscribed 4,000 shares of stock in the Northwestern Bank of Virginia		$400,000.00
1857—March 3—The Bank purchased of this stock 1,082 shares as follows:		
Northwestern Bank of Virginia at Wheeling	332 shares	
Northwestern Bank of Virginia at Wellsburg	250 shares	
Northwestern Bank of Virginia at Parkersburg	250 shares	
Northwestern Bank of Virginia at Jeffersonville	250 shares	
	1,082 shares	108,200.00
Leaving 2,918 shares		$291,800.00

1865—March 2—The Bank charged to the Commonwealth of Virginia all the stocks of the Bank of Jeffersonville, on the plea that the State had taken possession of that Bank, 1,642 shares		$164,200.00
And transferred the remaining stock to the State of West Virginia, 1,276 shares		127,600.00
1866—July 1—On the organization of the present Bank this 1,276 shares was transferred at 50 cents on the dollar, as follows, viz:		
National Bank of West Virginia at Wheeling, 300 shares	$30,000.00	
First National Bank of Wellsburg, 188 shares...	18,800.00	
Parkersburg National Bank, 150 shares	15,000.00	
The Internal Improvement Fund of Virginia subscribed to the Stock of the Northwestern Bank of Virginia:		
1856—August—30,326 shares.		32,600.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the First National Bank of Wellsburg (163 shares)		16,300.00
The President and Directors of the Literary Fund of Virginia subscribed to the stock of the Northwestern Bank of Virginia—1832—November 24—500 shares.		50,000.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the Parkersburg National Bank, 250 shares.		25,000.00

SUMMARY.

The State now holds in the—

National Bank of West Virginia at Wheeling, 300 shares (in the name of the State)	$ 30,000.00
First National Bank of Wellsburg, 188 shares in name of the State	18,800.00
First National Bank of Wellsburg, 163 shares in Internal Improvement Fund	16,300.00
Parkersburg National Bank, 150 shares in Internal Improvement Fund	15,000
Parkersburg National Bank, 250 shares in Literary Fund	25,000.00
	$105,100.00

1867—July 9—The Northwestern Bank of Virginia paid a dividend of 5 per cent. on 326 shares Internal Improvement Fund	$1,630.00	
On 1,276 shares Commonwealth of Virginia stock	6,380.00	
On 500 shares Literary Fund	2,500.00	
		$10,510.00
1868—August 1—A like dividend of 5 per cent. on the same stocks		$ 10,510.00

February 21, 1871.

I, J. S. Darst, Auditor of the State of West Virginia, and ex officio Secretary of the Board of the School Fund of said State, hereby certify that the foregoing is a true and correct copy from the record of the minutes of the proceedings of said Board, pages 37 to 41 of Record Book No. 1 of said Board.

Given under my hand and official seal, this 26th day of February, 1910.

J. S. DARST,
Auditor.

THE MASTER: Have you any examination in relation to that, Mr. Harrison?

MR. HARRISON: No, sir.

THE MASTER: I want to ask Mr. Hillman a question about an item here on page 113. Attention ought to be called to the significance of this exhibit, because this purports to be an official, sworn report, stating the amount of the stock in this Jeffersonville Branch. If there is anything that should go into the record that counsel for Virginia think impeaches that, of course this is the time to do it. But this seems to be of the same general official character as the other official reports are, as I understand it. Am I right about that?

MR. LILLY: Yes, and we never knew that was alive until about a week ago.

THE MASTER: Well, that undoubtedly comes from an official publication of the State of Virginia.

MR. LILLY: Yes, sir.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

By The Master:

Q. Mr. Hillman, won't you take the new print, please, on page 1193, and look at the item, interest on bonds and notes, under the column of 1860, $39,067.43, and followed out under 1861, $14,356.45, under 1862, $11,449.25, under 1863, $13,981.30. What I wanted to inquire is whether you are familiar enough with the statement to be able to state whether those are bonds and notes other than bonds and notes held by the State; and if not, can you ascertain that?

A. I am not familiar enough to do it offhand, but I think I can find out.

ARTHUR G. POTTER, recalled for further examination, testified as follows:

By The Master:

Q. Do you know about that, Mr. Potter, interest on bonds and notes, $39,067.42, in the column of 1860? Does that represent bonds and notes, other than bonds and notes held by the State, or is it to be included with the aggregate of the bonds and notes held by the State?

A. I cannot tell you offhand.

Q. Won't you and Mr. Hillman look that over between yourselves and see if you can find anything to show that, for each of those years?

A. Yes, sir.

Q. I would like to have you and Mr. Hillman look that over and report to me what the fact is, if you can find out.

A. All right, sir.

THE MASTER: You have no further examination in relation to this last exhibit, Mr. Holt?

MR. HOLT: No, sir.

MR. HARRISON: Mr. Littlefield, we have no cross-examination in regard to the exhibit put in in relation to the Jeffersonville Branch.

THE MASTER: Are you through with Mr. Hillman on the direct-examination?

MR. LILLY: There may be one other schedule that we may want to offer.

THE MASTER: What is the other schedule, Mr. Lilly?

MR. LILLY: It is about the banks, about the bad and doubtful debts. I do not know whether they have that worked up or not; but I think so.

THE MASTER: That is an additional schedule tending to answer the suggestion that there were bad and doubtful debts that ought to be deducted from the assets, on the ground that they appeared afterwards to be bad in whole or in part, is that it?

MR. LILLY: Yes, sir, paid or charged off.

THE MASTER: Have we got anything else? Let us see how far along we are. Is there anything else that either side wants to put in? Do you want to put in anything in relation to this Jeffersonville Branch?

MR. HARRISON: No, sir. I think the exhibit speaks for itself.

MR. ANDERSON: The exhibit does not show how much the State owned.

THE MASTER: It shows $164,000, capital of the Jeffersonville Branch.

MR. ANDERSON: Virginia did not own it.

THE MASTER: This schedule shows—in the first place we start out with the Northwestern Bank all owned by Virginia. Now the question is—just have this right in mind, so we won't have any misunderstanding about it—now the question is how much of that Northwestern Bank should be charged to the State of West Virginia. In the original record the counsel for West Virginia conceded that the whole of it should be charged. Now, then, since that time it has been discovered that there was a branch at Jeffersonville, which is in the territory of Virginia, and West

Virginia contends that whatever was properly attributable to that Branch in Virginia, of course, was not taken by West Virginia, and that they ought not to be charged with it. Now they put in an official report which shows that the amount of the stock that was represented by the Jeffersonville Bank was $164,000. And if that stands unimpeached, that comes pretty near showing that that is the amount of the capital stock that should be deducted from the total stock of the Northwestern Bank. Now that is the way the record stands as a matter of proof.

MR. HARRISON: From the total stock?

THE MASTER: In other words, instead of charging the total capitalization of the Northwestern Bank to West Virginia, the amount, less the stock that appears by this exhibit to have been in the Bank in Virginia, should be deducted. Do I make that clear?

MR. LILLY: Yes.

MR. ANDERSON: I would like to call your attention to the Defendant's Exhibit at pages 160 and 161, showing the number of shares.

THE MASTER: But since then they have produced this original record.

MR. ANDERSON: Your Honor is mistaken in supposing that the State owned all the stock in that bank.

THE MASTER: You misunderstood me; I did not mean at all that the State of Virginia held the whole capital; but the State of Virginia held a certain number of shares, which I valued before at $427,000; and that was its interest.

MR. ANDERSON: I misunderstood you. There is nothing to show that they owned all the stock in this bank.

THE MASTER: Your point was that here was a total capital, and the State owned of that capital a certain sum. The question is how much of that $164,000 was owned by the State.

MR. HOLT: That is ascertainable from another exhibit. It shows the number of shares upon which Virginia was at that time receiving dividends.

MR. ANDERSON: That is the Grazier's Bank, is it not?

MR. HOLT: It is the same thing. That shows the difference between $164,000 and $146,000 was privately owned.

THE MASTER: Up to today we have not had any definite information as to what the capital stock of that Grazier's Bank was. It is $164,000. Now the question is how much of that $164,000 did the State of Virginia own?

MR. HARRISON: It is on that single point that I would like to have an opportunity to confer with Mr. Potter before we close.

THE MASTER: Yes. Now West Virginia claims that these entries that they have put in in part, that is put the substance of in, show that Virginia, in 1860 and 1861 or 1862, or somewhere along there, was receiving dividends from the Grazier's Bank on $146,000. The general exhibit is in, but the exact transcript of the books is to be put in. Mr. Hillman's idea is that that transcript will show practically in terms that they were receiving dividends on that amount of stock. So that the way this case stands now is, $164,000 par, total stock of the Branch, and evidenced by the receipt of dividends, $146,000 owned by the State of Virginia.

MR. ANDERSON: That would assume that the Grazier Bank took over the stock and had no more stock. I think your Honor will find that the stock was largely increased.

MR. HOLT: Turn to page 174 and you will see they are paying dividends on a certain number of shares in the Jeffersonville Branch and on a certain number of shares in the Grazier's Bank.

MR. HARRISON: If you will get your exhibits in I will ask Mr. Potter a question about it.

THE MASTER: Here would be the situation. Here is $164,000 of capital, apparently established by this last exhibit. Now if the original entries, when they come in here, show that Virginia was receiving from this Grazier's Bank, which under these acts was the successor of the branch of the Northwestern, dividends on $146,000 capital, why, it raises a very strong inference that she was the owner at that time of $146,000 of the capital stock. Their exhibit here shows that, but Mr. Hillman thinks that the entries themselves go farther and more specifically state that fact. Well, if the books of Virginia show a receipt of dividends on a certain amount of capitalization, and there is not anything else in this case, I should have to come pretty near holding that that was their holding in the bank.

MR. ANDERSON: It would certainly be very persuasive evidence of that fact.

THE MASTER: It is open to both of you to put in all the facts you can get. I have been trying to get the facts in relation to this particular branch ever since the last hearing, and West Virginia has succeeded in producing this of course important piece of evidence.

MR. HOLT: Who has been charged now with the duty of showing what that record shows?

THE MASTER: I will put it this way. I shall hold on this exhibit that the capital stock of the Grazier's Bank was $164,000. And if, when these entries come here, they show that the State of Virginia, by its own books, was receiving dividends on $146,000 of that capital and there is not anything else in this case, I shall hold on that showing that the State of Virginia was the owner of $146,000 of the capital stock of that bank, and that West Virginia is to have that deducted from the total capitalization of the Northwestern Bank. If the case stops there, that is what I shall hold.

MR. LILLY: That would be all right so far, but it makes West Virginia pay for $18,000 that she never got. In other words, Virginia by her act of legislation took $164,000 of the capital stock, whether she owned it or not, and that $164,000 was deducted from the $374,000, and the stockholders in West Virginia did not lose any. But West Virginia got the rest that Virginia had. And that whole $164,000 was charged off from West Virginia's stock, leaving her $210,000. Virginia not only got her $146,000, but by her act of legislation cut all of that stock off.

THE MASTER: Does that necessarily follow? I want to get your idea about it. If Virginia held the whole of the stock of the Northwestern Bank, that all might be true; but she did not.

MR. ANDERSON: A lot of people in Tazewell held it.

THE MASTER: Virginia did not hold the whole stock. Now what was done in the other case, West Virginia was charged with all the stock that Virginia held in the Northwestern Bank, but we did not charge her with the whole capital stock of the Northwestern Bank, because there were other stockholders.

MR. LILLY: Over 8,000 shares.

THE MASTER: Now, the Tazewell Branch, when that came to be organized, it had $164,000 of capital, but it does not follow from that that Virginia had the whole of that, because there were other stockholders.

MR. LILLY: Suppose she destroyed it. The stockholders in the Northwestern Bank of West Virginia did not lose any, but Virginia lost the $164,000—that is, West Virginia did. Out of the $374,000 there was $164,000 cut off.

THE MASTER: Where does that appear?

MR. LILLY: Well, that will appear from the record right here, I think.

THE MASTER: Let us look that up so I can get it in my mind right now.

MR. LILLY: Suppose West Virginia only owned $10,000 in the Jeffersonville Branch, if she had cut off $164,000 and West Virginia lost that——

THE MASTER: Suppose the total capital was $100,000, and Virginia held $75,000, and when they come to go off West Virginia took $70,000 with her and left $5,000, or took $60,000 and left $15,000, and then the Tazewell Branch represented—no matter how much—but if Virginia's part was represented in the Tazewell Branch, how was West Virginia harmed, assuming that she got the proportion of the stock that Virginia held in the Northwestern Bank?

MR. LILLY: Suppose we use the figures in the record. $374,000 was Virginia's stock in the Northwestern Bank. There was $164,000, by Act of 1862, cut off into the Grazier's Bank from the Jeffersonville Branch.

THE MASTER: That does not come out of the $374,000.

MR. LILLY: Follow me just a minute.

THE MASTER: I want to get your point.

MR. LILLY: Well, when West Virginia came to get her part from Virginia, the residue, there was deducted out of Virginia's part the whole $164,000, leaving West Virginia the $210,000.

MR. ANDERSON: Who did that? Virginia was powerless out there.

MR. LILLY: But she was not powerless when she cut off.

THE MASTER: Look up the record and see what it says.

MR. LILLY: West Virginia not only lost the stock that Virginia had, but the stock that the private people had in the Grazier's Bank. It was deducted out of the $374,000. Of course it is only a small item, about $18,000.

THE MASTER: Let us look at the record and see what it says.

MR. LILLY: You see Virginia cut off $164,000, and she had $374,000, and West Virginia got the residue. And she did not get but $210,000, because Virginia had cut the $164,000 off. The private stockholders did not happen to be in West Virginia, but West Virginia lost it.

MR. ANDERSON: What became of the private stockholders in West Virginia?

MR. LILLY: That is not material.

THE MASTER: Let us have Mr. Lilly point out in the record just exactly what he thinks shows this.

MR. LILLY: The bank charged the Commonwealth of Virginia with all the stock of the Jeffersonville, on the plea that the State had taken possession of that bank, $164,200; and this $164,200 came out of the $374,000, notwithstanding the fact that part of that may have been private stock.

THE MASTER: What is there in Hubbard's letter that shows that?

MR. LILLY: You add here what we get, and here what we get.

THE MASTER: Here is your total here.

MR. LILLY: West Virginia was charged not only with what Virginia had in the Grazier's Bank, but with what the private people had, because the Northwestern Bank had been depleted $164,000; and when they settled with the stockholders, Virginia having done it, her stock suffered and not the stock of the private owners.

THE MASTER: You mean West Virgina suffered that.

MR. LILLY: Yes, West Virginia suffered that.

MR. ANDERSON: It was not done by Virginia.

MR. LILLY: Virginia cut off the $164,000.

MR. ANDERSON: She had that much stock.

MR. LILLY: No, she had $146,000.

THE MASTER: Have we got anything here that shows just exactly how much capital West Virginia received?

MR. LILLY: This report shows it there. There is $32,000 in one fund, and $50,000 in another; that makes $82,600, and that makes $374,400; then you deduct $164,200, and that leaves $210,200, that our pleadings claim.

THE MASTER: Why can't Mr. Potter and Mr. Hillman sit down and cipher this out, with the suggestions of Mr. Lilly, and see what this shows the way they figure it out as to the number of shares of stock that West Virginia had. It is a matter of very little consequence of course what was left in Virginia's hands, if we ascertain in the first instance what West Virginia received. One way of ascertaining of course what West Virginia received is to find out what the total capital held by Virginia was, and then deduct from that the amount retained by Virginia. But that might not be the only way. They might be able to ascertain independently of that computation. I would like to have Mr. Potter and Mr. Hillman look that over and see if they can cipher that out. You get my point, don't you?

MR. LILLY: Yes, sir.

MR. HARRISON: Mr. Lilly's point is that the whole capital stock, irrespective of whether the State of Virginia owned all of it or not, of the Jeffersonville Branch, should be deducted from the portion of the stock which the State of West Virginia owned in the Northwestern Bank. You cannot deduct somebody else's stock from what somebody else owned, and that is not sound.

MR. LILLY: The $164,000 of the Northwestern Bank stock had been reduced that much. When the loss had to be sustained, it was not the private stockholders in West Virginia that sustained it, but West Virginia had to sustain it.

THE MASTER: Can we get at this in another way? Are there exhibits enough in this case that show the assets of the Northwestern Bank in 1861 or 1862 or 1863, or whatever it may be, and then can we take this exhibit and deduct these assets from those assets? Of course, the real value of the stock is predicated upon the assets, and if we can ascertain how many assets West Virginia had——

MR. LILLY: We cannot do that, we could not get it after the other bank was formed. The Grazier's Bank is worth about 20 cents and the Northwestern Bank was worth $1.11. There is $33 surplus and profits in the Grazier's Bank, that is from this report that we filed this morning.

THE MASTER: What is the latest schedule on the Northwestern Bank?

MR. LILLY: That is 1861.

MR. ANDERSON: That was before the Grazier's Bank was formed. That was chartered during the War and was a Confederate institution.

MR. HARRISON: I would like to have Mr. Potter make a statement.

THE MASTER: We will suspend on this, and if they have any further statement from Mr. Hillman, they may put it in, in answer to this statement of Mr. Potter.

MR. LILLY: At page 984 of the record you will find the Statute incorporating the Grazier's Bank.

THE MASTER: Have we not got a schedule in here showing the condition of the Northwestern Bank?

MR. LILLY: Yes, in 1861.

THE MASTER: Let me look at that, please. Why cannot we do this—here are the assets as of January 1, 1861, and here is the first of October, 1861, in the exhibit put in this morning—why can't they take these assets and get the proportion of the assets that the Jeffersonville Branch held, and then apportion the stock on that basis?

MR. LILLY: Well, you might do that. Here are the two features I thought, the profit and loss——

THE MASTER: Let us see if this is not a fair proposition. Here, on January 1st, 1861, are the assets of the Northwestern Bank, and on October 1st, 1861, are the assets of that Branch. Now Virginia held a certain percentage of the capital stock of the whole Bank. Deduct the amount of the assets of the Jeffersonville Branch from the total assets, and then take the percentage that Virginia held, why would not that reach reasonably an approximation of the value of the amount taken by West Virginia? Do you get my point?

MR. LILLY: Yes.

THE MASTER: Why not let the two accountants work it out on that basis?

MR. LILLY: That might do it; only it seems the amount of the stock and the book value——

THE MASTER: Of course Virginia only held about half of this stock, a little less than half; if you sliced the branches off, she would have half of the Jeffersonville Branch, and West Virginia would have the other half.

MR. LILLY: But each branch had capital stock.

THE MASTER: But suppose they did. Here is the whole bank, that includes all the branches; there is

one branch in Virginia; now take the assets of the Virginia branch and deduct them from the total assets, and then the percentage that Virginia held in the total assets would be the percentage that West Virginia took of the remaining assets. Why is not that as near as we can reach it?

MR. LILLY: That possibly would be all right.

THE MASTER: Well, let us see if the two accountants cannot work it out on that basis. Now, Judge, the sugestion is this; we have some factors that are evidently fixed, for instance the total capital in the Grazier's Bank, and then we have got the percentage that Virginia held in the Northwestern Bank; now deduct the assets of the Jeffersonville Branch from the total assets of the Northwestern Bank, and then take the percentage that Virginia held in the total bank, and take that out of that balance, for the purpose of ascertaining the value of the assets that West Virginia held in the Northwestern Bank. I do not know how that would work out.

MR. ANDERSON: After we saw it stated we could understand it.

THE MASTER: Suppose we have the accountants work that out and see what the result is.

MR. HOLT: I had worked that all out to my satisfaction the other night, but I cannot seem to get anybody to agree with me.

THE MASTER: I have not made up my mind about it at all.

MR. LILLY: I agree with the Judge about it, only as to $18,000. We agree that Virginia got $146,000, because she owned that much and got dividends on it.

THE MASTER: It seems to me that this would be a fact in connection with the case. Let us assume, for the purpose of illustration, that Virginia held one-half of the stock—it was not quite one-half, but very nearly; well, if she held one-half of that stock, she held one-half of the stock wherever it was located. If the Jeffersonville Branch had $164,000 capital, why she would hold one-half there and she would hold one-half everywhere. She would be entitled to one-half of the assets, wherever they were located. Now deduct the assets of the Jeffersonville Branch from the total assets. That leaves the branches in West Virginia; and Virginia's interest in those branches would be one-half. And that would be, on that basis, the sum with which West Virginia would be charged.

MR. LILLY: That would do all right in theory, except for the fact that we show here conclusively that Virginia was getting dividends on $146,000 in the Jeffersonville Branch.

MR. ANDERSON: No, in the Grazier Bank, not the Jeffersonville Branch.

MR. LILLY: I am speaking about the record.

MR. ANDERSON: The record does not show.

THE MASTER: About all the record shows is that here was an Act of the Legislature practically changing the name of the Jeffersonville Branch to the Grazier Bank. The presumption is that they took it just as they found it.

MR. ANDERSON: That Act simply severed the connection between the branch bank at Jeffersonville and the parent bank, and transferred to the ownership of the Jeffersonville Branch all the stock it held.

THE MASTER: It if held the assets it held corresponding capital stock. You cannot get any more than the

value of the assets of course. West Virginia ought to be charged with her share of the value of these assets in the Northwestern Bank, no matter what the capital stock was; whatever that value fairly was, of course West Virginia ought to be charged with it. Is there any better way of getting at it than by deducting the assets of one from the other?

MR. LILLY: Yes.

MR. ANDERSON: There is evidence here that Virginia had $50,000 of stock in the Jeffersonville Branch. In addition to that she had her holding in the Northwestern Bank, in the parent company, probably. I do not know, but Mr. Potter informs me that there is a certificate down there, which he has seen, for $50,000 of stock held in the Literary Fund.

THE MASTER: Of course their answer to that is that Virginia was receiving dividends on so much stock in that Grazier's Bank.

MR. ANDERSON: She would be entitled, in addition, to dividends on $50,000, and she would be entitled to her share of the dividends in the parent bank.

THE MASTER: That leaves her responsibility just the same.

MR. ANDERSON: I know, but I just want to get at the truth about it.

THE MASTER: Suppose we let the accountants figure up the assets and see what it comes to, and then take that up in the argument. Is Mr. Hillman ready with the additional material in relation to the doubtful and bad debts of the banks, tending to show—what I suggested the other day was that the doubtful and bad debts I should deduct from the assets, and the suggestion was that they could show by the records what the facts were.

MR. HOLT: In other words, there have been some discoveries made since they were at Richmond. I did not know whether it was that, or what you asked Mr. Potter and Mr. Hillman to look up, those interest items on bonds and notes. As I understand they do not want to cross-examine Mr. Hillman on anything that has occurred heretofore, but if we put him on now with respect to these bad and doubtful debts they may want to cross-examine him.

THE MASTER: If you can, I think you had better finish up with that. Does Mr. Leeds have to go?

MR. HOLT: No, sir.

THE MASTER: Because Mr. Leeds might perhaps work out some of these computations with Mr. Potter. I would like to have them figure out this matter between these two banks and see how it works out. Now let us make progress with Mr. Hillman.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

Direct examination By Mr. Holt:

Q. Mr. Hillman, since you made your original bank schedules that are now in the printed record, Volume 2, the exhibits, have you made a further examination of the condition of the banks therein described, upon the subject of bad and doubtful debts?

A. Yes, sir.

Q. Where do you find any additional record evidence that you did not have before?

A. Document No. 14, published by the State of Virginia in January, 1860, on page 22, whereon it is shown that the sum total——

Q. I will ask you about the details of it in a moment. What is the first bank mentioned there that involves the subject of bad or doubtful debts?

A. The Farmer's Bank of Virginia.

Q. What year did that relate to ?

A. This relates to the year ending January 1st, 1860.

Q. What amount of bad or doubtful debts, if any at all, was embraced in the report of the bank's assets of that year?

A. $70,619.66.

Q. Were they doubtful or were they bad?

A. They were marked as bad debts.

By the Master:

Q. What is the amount you get?

A. $70,619.66, one year prior to the date we have.

By Mr. Holt:

Q. Do you find any note taken in the assets of the bank for the year 1861?

A. No, sir, the record is silent on those debts in 1861. But in 1860 they are included in the total assets of the bank.

By the Master:

Q. What do you mean by that, in the trial balance?

A. Yes, sir.

Q. Under what heading?

A. Under debt outstanding.

By Mr. Holt:

Q. Can you tell from the record whether or not they were included in its assets for the year 1861?

A. I should say they were included in its assets for the year 1861.

MR. HARRISON: You were asked if you could tell from the record. He states that he concludes that they were. Is he stating that as a matter of inference?

MR. HOLT: He is stating it as a matter of inference, as I understand it.

Q. Why would you say, Mr. Hillman, that they are embraced in the bank's assets for the year 1861?

A. For the reason that they were embraced in the bank's assets in 1860, and that the total of 1860, which is compared with the same total in 1861, fits in with the general trial balance of the bank, and that therefore, since the debts are mentioned as being bad in both cases, that if they were treated in one way in 1860 they would be treated in the same way in 1861; it is inferential.

Q. That is a mere inference then?

A. Yes, sir.

Q. The record does not show that to be the fact, beyond what you have said?

A. No, sir.

Q. Not what effect, if any, will the fact that that $70,000 was embraced in the bank's assets have upon your schedule of book values of that bank's stock?

THE MASTER: Do you have a schedule for 1860?

THE WITNESS: No, sir.

MR. HOLT: He is treating it now as being in for 1861, inferentially he says, because he found that they were there in 1860.

THE WITNESS: It would reduce the assets of the Farmer's Bank of Virginia in 1861, and which we have in our Exhibit No. 5, on page 48——

Q. You have stated generally that it would reduce the assets of the bank. That is a sufficient answer to that question. Now the next one I will ask you is this; how will it affect, to what extent will it affect the book value of that bank's stock? Have you made that calculation?

A. No, sir.

Q. Will you please make it right away?

A. I will do so.

THE MASTER: Why don't you let him put his details in, and then have his computations go in afterwards, instead of taking time for him to do it now?

MR. HOLT: The reason he examined the assets and liabilities before was for the purpose of ascertaining the book value of the stock. Now he finds a difference in his assets, and I want to know to what extent it will affect the book value.

THE MASTER: How much it will reduce the percentage?

MR. HOLT: Yes, how much it will reduce the percentage. And if he can give me that in brief, it will change his schedule according to the newly discovered facts. In other words I thought I could complete each bank as I went along, right away.

THE WITNESS: It will reduce the book value of the stock of the Farmers' Bank of Virginia to 112.83.

By the Master:

Q. As against what?

A. As against 115.07. After reducing it further by the dividend paid on January 1st, of 3½ per cent., it will leave the net value 109.33, instead of 111.57.

MR. HOLT: What do you find about bad or doubtful debts in the assets of the Bank of Virginia for the year 1861?

THE MASTER: He did not give the doubtful debts.

MR. HOLT: Doubtful debts are all in the assets; we would not throw them away.

By Mr. Holt:

Q. Do you find, in other words, any bad debts included in the assets of the Bank of Virginia for the year 1861?

A. Yes, sir, $6,412.

Q. To what extent, if any, would that affect the book value of that Bank's stock? I do not want you to stop now to make the calculation.

A. It would affect it by——

Q. The Master's idea is that you will calculate the new book value and insert it in your answer, on that basis.

A. All right, sir.

Q. Now we will come to the next bank. What is it?

A. There are no further banks which have bad debts listed on January 1st, 1861.

Q. What about the Exchange Bank?

A. The Exchange Bank of Virginia had no bad debts listed on January 1st, 1861. On April 1st, 1861, they had listed $8,224 bad debts; July 1st, 1861, they had no bad debts, and on October 1st, 1861, they had no bad debts. On January 1st, 1861, as I have said, there were no bad debts listed.

Q. I want you to give each bank, though, if I can get the names of them.

A. Oh, yes, sir.

Q. I have asked you now about the Farmer's Bank of Virginia, the Bank of Virginia and the Exchange Bank, have I not?

A. Yes, sir.

Q. What about the Fairmount Bank?

A. The Fairmount Bank had no bad debts listed.

Q. For the year 1861?

A. For the year January 1st, 1861.

Q. What about the Northwestern Bank?

A. It had no bad debts listed.

Q. Is that all of them?

A. There is the Bank of the Valley.

Q. What about the Bank of the Valley?

A. It had no bad debts listed.

Q. Then, as I understand you, Mr. Hillman, your further examination shows that the Farmers' Bank of Virginia and the Bank of Virginia, both had the bad debts you have mentioned embraced in their assets during the year 1861, but that none of the other four banks named had any bad debts listed for that year in their assets?

A. That is correct, yes, sir.

Q. And you will calculate the new book value of the stock of the Farmers' Bank of Virginia and of the Bank of Virginia, resulting from these bad debts being embraced in the assets, and insert it in your answer?

A. Yes, sir.

Q. What have you to say about bad debts in the assets of those banks, if you know, for the year 1863?

A. There is no record in that year of the banks, that I have been able to find, so that I could say nothing upon it.

MR. HOLT: You gentlemen may cross-examine him.

THE MASTER: I will ask him to put in this list he has of the bad and doubtful debts of these three banks, that he has right here.

By the Master:

Q. Mr. Hillman, will you please put into the record the list of bad and doubtful debts that you have, during 1860 and 1861, of the Farmers' Bank of Virginia, the Bank of Virginia and the Exchange Bank?

A. Yes, sir the statement is as follows:

BANK OF VIRGINIA.

		Bad Debts	Doubtful Debts
Page 10, Document 14,	Jan. 1, 1860	12,400	49,802.58
" 400, "	July 1, 1860	None shown	37,535.82
" 562, "	Oct. 1, 1860	6,412.00	36,485.82
" 8(Part 2)"	Jan. 1, 1861	6,412.00	43,973.57
" 204, "	Apl. 1, 1861	6,412.00	41,568.69
" 374, "	July 1, 1861	18,830.00	29,616.69
" 524, "	Oct. 1, 1861	None	22,512.69

The above bad debts will reduce the book value of the Bank of Virginia from $78.75 to $78.61, and after deducting the dividend of 3½% on the $70 per share, will reduce the net book value to $76.16 per share.

FARMERS' BANK OF VIRGINIA.

				Bad Debts	Doubtful Debts
Page 22,	Document 14,	Jan. 1, 1860		70,619.66	44,088.00
" 228,	" "	Apl. 1, 1860		70,695.81	44,620.00
" 412,	" "	July 1, 1860		67,738.81	41,195.31
" 570,	" "	Oct. 1, 1860		68,307.90	45,402.93
"16(Part 2)"	"	Jan. 1, 1861		70,773.96	45,437.34
" 212,	" "	Apl. 1, 1861		71,764.04	49,467.20
" 382,	" "	July 1, 1861		70,645.11	56,149.99
" 532,	" "	Oct. 1, 1861		70,645.11	55,467.58

The above bad debts will reduce the book value of the Farmers' Bank of Virginia from 115.07 to 112.83, and after deducting 3½% dividend from the above values we have net value 109.33.

EXCHANGE BANK OF VIRGINIA.

	Document			Bad Debts	Doubtful Debts
Page 580	(Part 1),	14,	Oct. 1, 1860.....		600.00
" 24	(" 2),	14,	Jan. 1, 1861.....		4,800.00
" 220	(" 2),	14,	Apl. 1, 1861	8,224.78	4,800.00
" 390	(" 2),	14,	July 1, 1861.....	None	600.00
" 540	(" 2),	14,	Oct. 1, 1861	None	600.00

Cross examination By Mr. Harrison:

Q. Does not the tabular statement, following the balance sheet of the Farmers' Bank of Virginia, page 400 of the exhibits, for the year 1861, show bad debts?

A. Yes, sir, it does.

Q. To what amount?

A. $70,773.96.

Q. Well then, it is not a matter of conjecture or inference at all as to the bad debts for the year 1861, as your answer on your examination in chief would indicate?

A. You misunderstand my answer, Mr. Harrison. I do not say there were no bad debts. The answer was that the inference was if the bad debts had been included in the assets in 1860, that they were included in the assets in 1861; not that they did not exist.

Q. Then it is a positive fact, as shown by the record, that the bad debts did exist for the year 1861?

A. Yes, sir.

Q. In the amount just stated?

A. Yes, sir.

Q. That amount is a little larger than the statement you gave for 1860, bad debts, is it not?

A. Yes, sir, but not than the amount which I used in my calculation which was asked for.

Q. Now does not the same tabular statement of the Farmers' Bank that you are now referring to show doubtful debts, and if so in what amount?

A. $45,437.34.

Q. Now turn to page 404 of the exhibits, where you will find the tabular statement of the Bank of Virginia for the year 1861, which follows the balance sheet of that Bank. You

have testified that the bad debts for 1861 were $6,412, which is the amount shown on the tabular statement. Were you referring to that statement when you testified, or did you get that amount from somewhere else?

A. I got that amount from somewhere else, probably the same source from which this exhibit was derived.

By the Master:

Q. Well, you got it from Document No. 17?

A. No, sir, Document No. 14.

By Mr. Harrison:

Q. What doubtful debts of the Bank of Virginia are shown on the same statement?

A. $43,973.57.

Q. Now turn to page 410 of the exhibits, the tabular statement of the Exchange Bank of Virginia for the year 1861. Does not that show doubtful debts, and if so in what amount?

A. $4,800, doubtful debts.

By the Master:

Q. Your detail statement agrees with that, does it not?

A. Yes, sir.

By Mr. Holt:

Q. Mr. Hillman, do the papers or sheets just handed to the stenographer show these details?

A. Yes, sir, they do; they tally with that.

By Mr. Harrison:

Q. Now turn to pages 406 and 407 of the exhibits, which contain the condition of the Bank of the Valley, including its franchise, for January, 1861. Does not that statement

show, in the foot note, that there was a probable loss of $30,000, that the Bank was liable to sustain by reason of the transactions of its cashier, and also $13,522.12?

A. It shows that the cashier—excuse me, no, sir, I think not. It shows that the cashier—that there was a shortage, due to the cashier, or the teller rather, which had been reduced to $13,000, and which balance it was hoped would be finally settled the same way; and on the other side it says, "In addition to the amount of ascertained liabilities as stated above, it is proper to add, that there may probably be due to the mother bank, to banks and depositors, about $30,000."

Q. For what?

A. "Due to omissions on the part of the late teller to enter credits for remittances and deposits—the precise amount not yet accurately ascertained. No ultimate loss, however, to the Bank or his securities is apprehended."

Q. So then that statement does show, as I stated in my question, a possibilitiy of the loss of those two amounts?

A. Yes, sir, a possibility of loss.

MR. HARRISON: That is all I think I want to ask Mr. Hillman.

THE MASTER: Does that include everything from Mr. Hillman?

MR. HOLT: I think that includes all the bad debts.

By Mr. Holt:

Q. Is there anything in these records anywhere, Mr. Hillman, that you have been able to discover, that shows the reduction of the amount of these bad debts that you have described, by collection or otherwise?

A. Yes, sir, they show that bad debts were from time to time charged off or paid, ceased to be bad, by the fact of variations in the amount being less at subsequent dates than

they were at prior dates. With reference to the doubtful debts, these details that I have given will show that that account also varies, being sometimes more and sometimes less in the doubtful debts, showing that some of these debts were paid from time to time, and were not a total loss.

By the Master:

Q. These details are all reflected accurately in the details that you have given?

A. Yes, sir.

By Mr. Harrison:

Q. The reduction that you speak of in the bad or doubtful debts would indicate that they might have been charged off as well as collected, would it not, Mr. Hillman?

A. Yes, sir, that is a possibility.

MR. ANDERSON: Is there any evidence that they were collected?

MR. HARRISON: None at all except the fact that they varied in amount sometimes. That is all I care to ask.

THE MASTER: Is there anything further now from Mr. Hillman, except some computations he may make? And if he cannot stop to make them, Mr. Leeds can make them afterwards.

MR. HOLT: Is is expected that someone will get a transcript of the record on the item of dividends paid upon stock owned in the Grazier's Bank by Virginia.

THE MASTER: Mr. Page has agreed to have that sent to me. It has not arrived yet.

MR. LILLY: We would like to have this matter closed sometime, without any futher evidence.

THE MASTER: I think I have been reasonably liberal about keeping the matter open, and I do not think that we ought to shut down here now, and if I think I want anything more I will indicate what it is, but I think we ought to have a definite understanding now as to whether the matter is not closed; and if it is not closed, as to what items it is now held open for. That is what you want, is it not, Mr. Lilly?

MR. LILLY: Yes, we either want it closed, or else that we are going ahead, and if we are going ahead we want to get to work and go over it again.

THE MASTER: If we are through with Mr. Hillman, that leaves him where he is free to go if he wants to.

MR. HARRISON: That is satisfactory, as far as I am concerned.

THE MASTER: I was just getting back to this Northwestern Bank scheme. Here is $168,000, par value, and here is $164,000, par value, in the Grazier Bank. That is just about one-fifth. I find the aggregate assets of the Northwestern Bank in 1861, according to these schedules here, were $2,110,243.41, and the aggregate assets of the Bank here, according to this table you put in this morning, $414,000; that is just about one-fifth. So apparently they sliced off one-fifth of the stock and one-fifth of the assets, relatively speaking. The question is whether, under those circumstances, we do not get an equitable result if we take one-half of the four-fifths as chargeable to West Virginia.

MR. LILLY: It would be absolutely inequitable in my opinion. When the record shows that Virginia had $146,000 in the Grazier's Bank, why would you imagine or presume or infer that she only had one-half or one-fifth or any other amount? If you ignore the evidence on that feature, then of course you can take any percentage as a basis.

THE MASTER: Well, we have to assume of course that there was no change in the proportion that the State of Virginia held during the process of transferring the Jeffersonville Branch to the Grazier's——

MR. LILLY: That would be justified.

THE MASTER: And that this scheme of the loyal gentlemen did not interfere with the proportion. I do not see yet what that legislation was based on.

MR. LILLY: You will bear in mind that Virginia did not own so much in the Northwestern Bank. It is true that the aggregate was so much, but each branch bank had so much stock. And she might have so much stock in a branch bank in these different funds.

THE MASTER: There is nothing in the record to show that, except in your exhibits here.

MR. LILLY: Is not that sufficient? I think we have reasonably conclusive evidence to the contrary. You cannot imagine that Virginia only owned one-half in the Grazier's Bank, when she was getting dividends on $146,000 out of $164,000. Now, if she did not own it how did she get the dividends? If she did own it West Virginia ought not to be charged with it. West Virginia only got $210,000, by the report made there in 1871.

THE MASTER: Up to date I have not looked at it carefully enough to understand it fully. I do not see how that shows it.

MR. LILLY: I will refer to that if I argue the matter before your Honor.

THE MASTER: Of course your letter was pretty general, and this Hubbard report was not in the record at the time. I wish you would make a careful analysis of this so I will be able to pick it out.

"6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Grazier's Bank of Virginia, for a like number of shares of the stock thereof."

That indicates what Virginia was to receive. She was to have all the stock—Virginia was to have all the stock that was not taken up by private stockholders. The previous section provides:

"5. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through the said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to said Grazier's Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in the said Grazier's Bank of Virginia."

Then the next section provides that the State shall have all of the stock not sold or transferred. So she may have had more stock in the Grazier's Bank than she had in the other bank.

THE MASTER: That is, the other stockholders may have been excluded by that limitation of three months. That is sort of a legislative transfer of the stock that should not be taken up in that way by the State of Virginia.

MR. HOGG: What is the date of that Act?

MR. ANDERSON: That is dated in March, 1862. The records down there ought to show something about it.

THE MASTER: But we are discussing it on the basis of the record as it is now.

MR. ANDERSON: Mr. Page may be able to find it.

MR. HOLT: What we would like would be for the testimony to come to an end, of course after both sides get what they want, and the Master feels that he has enough to act upon. Mr. Anderson suggests Mr. Page may have something more. As long as we keep this thing open at both ends, we will never get through with it.

THE MASTER: You will never get any report while it is open that way.

MR. HOLT: I think this time when we quit we ought to quit, whether we have got in everything or not.

THE MASTER: As far as I am concerned I think we can make that arrangement.

MR. HOLT: Otherwise we will never get done with it. Though there is something that I understand your Honor would like to have in connection with those tolls.

THE MASTER: I would like to have that contract.

MR. HOLT: That ought to be the business of someone, so that the Master may rely on someone to get it. If we go away without any arrangement, it being everybody's business, it will not be done.

THE MASTER: I suppose Mr. Hillman and Mr. Potter would take that up. I think the understanding was that Mr. Leeds was to get that.

MR. HOLT: Mr. Hillman, what is it you understand Mr. Leeds is to do in Virginia?

MR. HILLMAN: Mr. Leeds is to get the amount of tolls derived by the State from the Blue Ridge Road,

as far as he can tell, whether they were collected on direct tolls or under payments by the Virginia Central after the lease was made. And then to find out the actual terms, if it is possible, of the lease which was made by the Blue Ridge Road to the Virginia Central.

MR. ANDERSON: I would say leases, because there may be more than one.

THE MASTER: Mr. Hillman suggested that they might find some entry on some book down there undertaking to summarize it. If we cannot find anything better than a summary, we will take the summary. Now what else was there?

MR. ANDERSON: I do not know of anything, unless we can find some information about this Northwestern Bank and the Jeffersonville Branch.

THE MASTER: What do you say about that?

MR. ANDERSON: I would suggest that you ask Mr. Page to have a diligent search made for any evidence in regard to the transactions of Virginia with the Jeffersonville Branch and the Grazier's Bank in 1861, 1862 and 1863.

THE MASTER: Everything is cleaned up, as I understand it, except this question of the Blue Ridge Road and the Jeffersonville Branch. And the Blue Ridge Road will be taken care of by the fact that Mr. Leeds is going to get the amount paid in tolls during the whole existence of the road, and the contract, if he can find it, and if he cannot find the contract if there is any summarization of it, if it is not on the record anywhere, we will have that.

MR. HARRISON: Then he will have to go to Richmond. Of course Mr. Potter had better go along with him or follow him, so that we will have the thing ended once for all.

THE MASTER: Then let Mr. Potter and Mr. Leeds make a thorough investigation down there and dig out whatever there may be that tends to solve this Jeffersonville Branch matter; and whatever Mr. Leeds and Mr. Potter report to me I will take as the record.

MR. HOLT: That is all right.

MR. HARRISON: Or, if they do not agree, let them report their respective findings or ideas.

THE MASTER: If they do not agree I do not want to call the counsel together again on that. I think it had better be submitted, and let them submit their suggestions in writing on each side.

MR. ANDERSON: I do not see how there can be any disagreement; it will be extracts from the record.

THE MASTER: I do not suppose there will be; but suppose they do, would that be agreeable, Judge?

MR. HOLT: Yes, sir.

MR. HARRISON: As far as we are concerned, if there is any disagreement reported by Mr. Potter and Mr. Leeds, we will just leave that to the Master to settle. You have got all the light on the thing that can be gotten, and I do not see how the counsel can illuminate you or assist you.

MR. HOLT: Still you never can tell what is going to happen.

THE MASTER: I think if there is any fact in dispute here it is proper for me to submit that issue to the counsel on each side and give them an opportunity to be heard on it if they want to be. How do you feel about that, Judge?

MR. HOLT: I would be perfectly willing to leave it to the Master; but still, if I were in the Master's place, that is what I would do.

THE MASTER: I think that is what I did do and what I will do.

ARTHUR G. POTTER, recalled for further examination, testified as follows:

By the Master:

Q. With reference to the item of $39,067.42, found on page 1193 of the last print, interest on bonds and notes, for 1860—

A. That amount appears at page 238, Document No. 17, record of the Board of Public Works for 1860, under the heading of interest on bonds and notes. On page 828 of the reports of the James River and Kanawha Company, Volume 5, 1855 to 1860, the same item appears under the heading fourth division, interest. It therefore appears to be interest on some obligations in connection with the fourth divison of the construction of the canal. On pages 238 and 239 of the first volume just mentioned, Document No. 17, is a list of the notes due on account of the North River Navigation Company and of the guaranteed bonds of the Company. We can identify the interest appearing on page 238 with these two groups, leaving two items of interest not identified. But at the bottom of page 238 appears the heading, the amount of bills payable outstanding on the 30th of September was as follows, giving five items aggregating $153,561.85. It appears therefore that the item of $39,067.42, interest on bonds and notes, applies to the obligations.

By Mr. Holt:

Q. Mr. Potter, did you and Mr. Hillman agree on that statement that you have just made?

THE MASTER: The long and short of it is that it is impossible to tell from any records that we have whether this item of $39,067.42 is an item of interest on indebtedness other than indebtedness to the State. The significance of that of course is this; the schedules

that we have, and the statements, are predicated upon the assumption that when the indebtedness to the State was transferred into stock, that it practically extinguished the indebtedness and eliminated the element of interest. Now if there were other indebtedness, that might not follow as to the other indebtedness. What the fact about that is we do not seem to be able to ascertain. That is it.

MR. HOLT: I understand that. But I want to know whether Mr. Potter and Mr. Hillman agree.

THE WITNESS: I understand we agree on that.

MR. HILLMAN: Your honor, I do not quite agree with Mr. Potter on that $153,000, since the interest on that for a year would only be $9,000, and could not possibly make up the $39,000.

THE MASTER: That is the $39,000 could not be predicated upon that principal sum?

MR. HILLMAN: No.

MR. POTTER: I said that absolutely.

MR. HILLMAN: And for that reason I assumed that it must be an item that was finally absorbed by the State.

MR. HOLT: What year, Mr. Littlefield does this transaction relate to?

THE MASTER: 1860. I wanted to try and make this point certain if I could.

MR. HOLT: Is any month given there?

THE MASTER: No.

MR. HARRISON: The statement shows that the interest was paid up to September 30th, 1860, 1861 and 1862.

THE MASTER: Some interest was paid.

MR. LILLY: But it dropped to $14,000 in 1861.

MR. HOLT: To some extent interest was paid.

MR. LILLY: That may be interest that had accrued before the Act of March 23rd, 1860, and yet would be reflected in this report of 1860.

MR. HOLT: I have no doubt that that $200,000 of new stock that Virginia subscribed for at that time, and paid cash for, was intended to take care of some of these things. That of course is mere supposition on my part.

By Mr. Holt:

Q. Mr. Potter, will you put into the record that Confederate calculation I asked for yesterday?

A. Yes, sir. The indicated deficit of the James River and Kanawha Company, based on the cash account for the year ended September 30th, 1861, was $69,809.54. Reducing this at the Confederate scale of $1.10, for the month of September, 1861, the reduction to gold would be $63,463.21. For 1862, the deficit of $46,609.86, reduced at $2.50 would give $18,643.94 of gold. The deficit for 1863 of $129,036.25, reduced at $12.50, gives $10,322.90 gold.

MR. HARRISON: Nothing remains now to go into the record except whatever Mr. Potter and Mr. Leeds may report to you with reference to the Jeffersonville and Grazier's Banks, and the matter of tolls' collection from the Blue Ridge Railroad, and the contract, if they can find it.

MR. HOLT: As I understand it, that closes the testimony upon both sides.

MR. HARRISON: Yes, that is my understanding.

THE MASTER: What time would you like to go on this afternoon? I suppose you are both prepared to go on and argue.

MR. HARRISON: Oh, yes, sir, we want to make progress right along. I suppose you are ready to go on after lunch, Judge, are you not?

MR. HOLT: I suppose any discussion that is indulged in now will be confined to the James River and Kanawha Company, the Blue Ridge Railroad and market quotations, is that the idea?

MR. LILLY: And the Grazier's Bank.

THE MASTER: I won't limit any of you, if there is any phase of the case that you want to discuss.

MR. HOLT: How do you feel about those?

MR. HARRISON: Those I think will be the main subjects discussed.

MR. ANDERSON: And the question as to the book values and the par values.

MR. HARRISON: The incidental subjects.

THE MASTER: That has been pretty thoroughly gone over, but still, if either party wants to say anything about it, I will hear them.

MR. HOLT: I did not suppose that we would go into a general rehash of what we had been through before.

MR. HARRISON: We cited a Virginia case in our brief of the Virginia Court of Appeals, the old Court, seventy-five or eighty years ago, and no extracts were given from that decision, nor did I take it up and point out just what the facts were before the Court, and what the decision was, in the final argument of the

case. Now we think that case has an important bearing on the very point you have just discussed.

THE MASTER: Let us have that case right here this afternoon.

MR. ANDERSON: That is Bull. vs. Douglas, 4 Montfort, 303.

MR. HARRISON: I am not going to stop now to say what it is, but we will point out to you just the bearing it has upon the question.

THE MASTER: When would it be agreeable to you to come in, two or half past?

MR. HOLT: Any time would suit me. Say half past two.

THE MASTER: At my request Mr. Rosewell Page, Second Auditor of Virginia, has sent me the following extracts from the day book, 1861 to 1865, of the Auditor's office of Virginia:

DAY BOOK.

1861 to 1865.

Auditor's Office of Virginia.

I.

To DIVIDENDS:

Page 86, April 1, 1862. Received from Grazier Bank of Virginia on account of the dividend to be paid by said bank, under act of Assembly passed March 13th, 1862, ... $14,000.00

II.

To DIVIDENDS:

Page 98, July 22, 1862. From the Grazier Bank of Virginia on account of 10% dividend due the Commonwealth under the 9th section of an act passed 13th March, 1862, ... $640.00

Page 98, July 22, 1862. From ditto on account of the dividend declared by said bank, the 30th day of June, 1862, ... $7,320.00

III.

To DIVIDENDS:

Page 145, Jan. 20, 1863. From the Grazier Bank of Virginia on account of dividends due State on capital stock of said bank, declared to first December, 1862, ... $7,320.00

IV.

To DIVIDENDS:

Page 196, July 28, 1863. The Grazier Bank of Virginia on account of the dividend declared by said bank to First of July, 1863, upon the stock held in said bank by the State of Virginia, ... $6,820.00

I, Rosewell Page, Second Auditor of Virginia do certify that the foregoing is a true copy from the Day Book in the Office of the Auditor of Public Accounts, Richmond, Virginia.

The Treasurer's name heads each page.

December 10th, 1914.

ROSEWELL PAGE,
Second Auditor of Virginia.

At this point a recess was taken until 2:30 P. M.

OFFICE OF THE GRAZIER'S BANK OF VIRGINIA.

Jeffersonville, July 23rd, 1863.

H. W. Thomas ,Esq., Cas. 2nd Auditor.

Dear Sir:

Yr. fvr. of the 6" is received & an answer would sooner have been given, but for the presence of the public enemy.

The number of shares not exchanged by private stockholders in this Bank is 1364 of $100 each, making the sum of $136,400.00.

Col. F. M. Mullen has an application before the Governor for the transfer of 5 shares. If the Governor directs the transfer, then the number of shares to be transfered by the state will be 1359; or $135,900 of Capital Stock.

You say the state holds 826 shares. This is not sufficient to absorb all the capital of the late Branch Bank and will render the act of incorporation impracticable. I was under the impression that the state owned or held nearly $200,000 in the N. W. Bk. In 1857 the N. W. Bk. bought 1-3 of the State's Stock and the proportion of that purchase which fell to this Branch was 250 shares, or $25,-000.00. On this basis the state's interest is nearer $200,000.00.

Very truly yours,

Jno. A. Kelly, Cas.

2,918
852

3,770

A Copy—Teste:
Dec. 17, 1914.

ROSEWELL PAGE,
Second Auditor of Virginia.

Executive Department.

July 2nd, 1863.

The Act of the General Assembly of the 13th of March, 1863, makes it the duty of the Governor to cause certificates of the stock held by the State in the North Western Bank of Virginia for an amount equal to the balance of the Capital Stock of said bank, not exchanged, by private stockholders, to be returned and assigned to the Grazier's Bank of Virginia for a like number of shares of the stock of that bank: therefore,

Ordered, that the Second Auditor cause the stock so held by the state in the North Western Bank of Virginia to be returned to said Grazier's Bank, and assigned to it, and that he moreover require said last bank to issue to the state, a like number of shares of its stock, in lieu of the amount so returned and assigned, & that the same be done in accordance with the said act of 13" of March, 1863.

By order of the Governor,

George W. Munford,

Sec'y. of the Com'th.

John A. Kelly,
Cash.

A true copy,

Teste:

Dec. 17, 1914.

ROSEWELL PAGE,

Second Auditor of Virginia.

The Comwlth. proper became the owner of 4000 shares of Capital Stock of the North Western Bank of Virginia, in the following manner.

1837. July 7. Warrant on the Treasurer for		200.000
" Octr. 3	Ditto	82,809.33
1839 June 29	Ditto	92,282.00
Dec'r. 1837 June & Dec'r. 1838		
Dividends.	33,000.00	
Less interest	8,091.33	
		24,908.67
		$400,000.00

For which scrip dated July, 1837, is in the possession of the Treasurer.

On the 27. of Feby., 1837, there was paid into the Treasury	$37,500.00	
		37,500.00
		38,671.42
		$113,671.42

In payment of 1082 shares at $105,05676 sold to said bank.

4000—

1082

2908 shares

J. J.

30 July, 1863.

A true copy.

Teste:

ROSEWELL PAGE,

Dec. 17, 1914.

Second Auditor of Virginia

OFFICE OF THE GRAZIER'S BANK OF VIRGINIA.

Jeffersonville, Augt. 26, 1863.

H. M. Thomas, Esq., 2nd. Aud't.

Dear Sir:

Yr. favor of the 30 ulto. is recd. & I enclose certificate of Grazier's Bank Stock as indicated in yr. letter, as follows:

Cert. No. 16, Com'r. for use of Literary Fund.....500 shares.

Do " 17, Do for Board of Pub. Works .....300 shares.

Do " 18, To the Commonwealth .....564 shares

making in all .....1,364 shares.

Being the whole number to which the state is entitled under the acts of 13 March, 1862, and 11 March, 1863. A strict compliance with the law would require the return of N. W. Bk. stock to this office, before the issue of this scrip, but as you request, I enclose the certificate and you will please return me with proper assignment, dated prior to date of these certificates, 1364 shares of stock N. W. Bk., held by the state.

Very truly yours,

Jno. A. Kelly, Cas.

A copy,

Teste:

Dec 17, 1914.

ROSEWELL PAGE,

Second Auditor of Virginia.

Richmond, Va., December 16, 1914.

Hon. Chas. E. Littlefield,
61 Broadway,
New York City.

Dear Mr. Littlefield:

I am enclosing herewith a statement covering the information you asked for in connection with the Blue Ridge Railroad. The data is very meager, but it is all that I was able to ascertain. I have noted the acts under which the road was authorized, and if you care to consult them I suppose you can find them in the library in New York.

With reference to the Northwestern Bank, I was unable to find anything except what is already incorporated in the Record. I am mailing these to you for the reason that I think you require them as soon as possible.

Mr. Potter has not arrived here as yet, and I suppose he will send you a separate statement. I wired Mr. Potter's office today, asking if he was coming up, but up to this time I have not received a reply.

Very truly yours,

EDWARD P. LEEDS.

Dec. 17th. Mr. Potter arrived yesterday and is sending additional information.

EPL/H
Inc.

Richmond, Va.
December 17, 1914.

Hon. Chas. E. Littlefield,
61 Broadway, New York.

Dear Mr. Littlefield:—

Since writing you yesterday, I desire to add that there will be forwarded to you (or probably brought by Mr. Potter), a copy of the Acts mentioned in my letter, a copy of the agreement between the Board of Public Works and the Va. Central Railroad, and acceptance of same by the latter company, and a copy of some correspondence touching upon the North Western Bank.

I have sent a copy of this and my preceding letter and all reports to Attorney General Lilly at Charleston.

Very truly yours,

EDWARD P. LEEDS.

James Park, C.P.A.
Arthur G. Potter, C.P.A.
W. A. Campbell, C.P.A.
Chas. Griswold Bourne
Fellow Amer. Ass'n. Pub. Acc.

Telephone
Cortlandt 3915

Cable Address
"Parkpotter" New York

PARK, POTTER & CO.
Certified Public Accountants
New York, Chicago, Cincinnati
and London, England
149 Broadway, New York

December 18th, 1914.

Chas. E. Littlefield, Esq.,
61 Broadway,
New York, N. Y.

Dear Sir:—

I reached Richmond on Tuesday and checked up a statement consisting of two pages of matter pertaining to the Blue Ridge Railroad prepared by Mr. Leeds of which he sent you a copy. The two acts referred to at the top of the page are very important and I had copies made of them which I send you herewith.

I also enclose the following with reference to stock in the Grazier's Bank held by the state of Virginia, all of which have been certified by Mr. Page:

Letter—July 23rd, 1863, John A. Kelly, Cashier Grazier's Bank, to H. W. Thomas, Second Auditor.

Letter—Aug. 26th, 1863, John Kelly, Cashier Grazier's Bank, to H. M. Thomas, Second Auditor.

Copy of Executive Department Paper, July 2nd, 1863, relating to the issue of stock of Grazier's Bank to the state.

Copy of a statement evidently prepared by some clerk in the Second Auditor's Office at July 30th, 1863.

Two documents will follow, viz. a copy of the Board of Public Works, Minutes of April 28th, 1853, stating the conditions on which the Blue Ridge Railroad will be transferred to the Virginia, Cent. and a copy of an original document, being a certified copy of the minutes of the Virginia Central Railroad, accepting the Blue Ridge on the conditions laid down in the minutes above mentioned.

Owing to the press of other duties in the Corporation Commissions Office I could not get copies of these yesterday, but they promised to mail them to me today and you will no doubt have them tomorrow.

I would like to call your attention to the letter of July 23rd in which the cashier of the Grazier Bank states as follows:

"In 1857 the North Western Bank bought ⅓ of the State's Stock and the proportion of that purchase which fell to this Branch was 250 shares."

The statement shows that the number of shares actually sold by the state was 1082 shares and if 250 of this 1082 was the number of shares apportionable to the Jeffersonville Branch, then 832 shares was apportionable to the Wheeling Bank with the two branches in the new state. The percentage therefore is as follows:

250 Shares = 23.105%
832 " = 76.895%

Yours very truly,

A. G. POTTER.

Dic. AGP/BP.

HISTORY OF THE BLUE RIDGE RAILROAD.

Incorporated by Chapter 147, Acts of Assembly of the State of Virginia, 1849, and passed March 5, 1849. (Page 99, Acts of Virginia, 1849).

Act of Incorporation amended by Chapter 156, Acts of Assembly of Virginia, 1852, passed March 3, 1852. (Page 125, Acts of Virginia, 1852).

PAYMENTS MADE BY THE STATE OF VIRGINIA FOR THE CONSTRUCTION OF THE BLUE RIDGE RAILROAD.

Entries taken from page 137, Ledger A, Internal Improvement Fund on file in Second Auditor's Office, State of Virginia.

Date.			Amount.
1850	Sept. 30	To Robert Butler, Treasurer.....	$25,063.17
1850	Sept. 30	To Robert Butler, Treasurer.....	4,204.87
1851	Mar. 31	To Robert Butler, Treasurer.....	59,069.06
1851	Sept. 30	To Robert Butler, Treasurer.....	95,651.64
1851	Sept. 30	To Sundries.....	33,400.00
1852	Mar. 31	To Robert Butler, Treasurer.....	133,137.08
1852	June 30	To Robert Butler, Treasurer.....	99,430.80
1852	June 30	To Robert Butler, Treasurer.....	1,680.00
1852	Sept. 30	To Robert Butler, Treasurer.....	83,007.39
1852	Dec. 31	To Robert Butler, Treasurer.....	82,903.63
1853	June 30	To Robert Butler, Treasurer.....	178,381.94
1853	July 21	To Robert Butler, Treasurer.....	12,736.67
1853	Sept. 30	To J. B. Stovall, Treasurer.....	48,245.17

From Page 187, Ledger B, same fund, on file as above.

1854	Mar. 31	To J. B. Stovall, Treasurer	144,333.23
1854	Sept. 30	To J. B. Stovall, Treasurer	90,627.77
1854	Sept. 30	To J. B. Stovall, Treasurer	780.80
1855	June 30	To J. B. Stovall, Treasurer	109,002.98
1855	Sept. 30	To J. B. Stovall, Treasurer	35,695.63
1856	Sept. 30	To J. B. Stovall, Treasurer	128,964.25
1856	Sept. 30	To J. B. Stovall, Treasurer	522.50
1856	Dec. 31	To J. B. Stovall, Treasurer	86,265.23
1857	Sept. 30	To John S. Calvert, Treasurer	28,495.49
1857	Sept. 30	To John S. Calvert, Treasurer	750.00
1858	Sept. 30	To John S. Calvert, Treasurer	44,811.12
1859	Mar. 31	To John S. Calvert, Treasurer	79,009.77
1859	June 30	To John S. Calvert, Treasurer	1,837.57
1860	Mar. 31	To John S. Calvert, Treasurer	662.00
1860	Dec. 31	To John S. Calvert, Treasurer	36.10
1862	Sept. 30	To Va. Central Railroad Co	70,000.00
1870	June 29	To Va. Central Railroad Co	20,147.62

The last two entries were amounts tolls retained by the Virginia Central Rwy. and used for contsruction purposes on the Blue Ridge Railroad as sanctioned by the State of Virginia. See pages 136 and 171, Journal D, Internal Improvement Fund, on file in Office of Second Auditor, State of Virginia.

Total of above entries	$1,698,853.48
Total credits for material sold	3,982.63
Total cost of road	$1,694,870.85

TOLLS RECEIVED BY THE STATE OF VIRGINIA FROM THE VIRGINIA CENTRAL RAILROAD FOR THE USE OF THE BLUE RIDGE RAILROAD

Accounts taken from Ledger B, page 187, Internal Improvement Fund on file in Second Auditor's Office, State of Virginia.

Date.		Period covered.	Amount.
1858	Sept. 30	By settlement 1st July, 1858.....	$ 2,127.08
1859	Mar. 31	By tolls to 1st Jany., 1859.....	4,559.85
1859	June 30	By tolls to 1st April, 1859.....	1,263.86
1859	Sept. 30	By tolls to 1st July, 1859.....	1,789.43
1860	June 30	By tolls to 1st April, 1860.....	2,827.87
1860	Sept. 30	By tolls to 1st July, 1860.....	1,761.75
1860	Dec. 31	By tolls to 1st Oct., 1860.....	2,884.61
1861	Mar. 31	By tolls to 1st Jany., 1861.....	1,534.69
1861	June 30	By tolls to 1st April, 1861.....	704.19
1861	Sept. 30	By tolls to 1st July, 1861.....	1,082.64
1862*	Sept. 30	To Virginia Central R. R. Co.....	70,000.00
1863	Mar. 31	Tolls 1st Jany., 1863.....	8,078.05
1864	Sept. 30	Tolls 1st Jany., 1863.....	64,984.49
1870	June 29	Revenue.....	7,712.19
1870*	June 29	To Blue Ridge Railroad.....	20,147.62
			$191,458.32

*Tolls retained by the Virginia Central and used for construction purposes.

I certify that the foregoing entries are correct copies from the books of the State of Virginia.

EDWARD P. LEEDS,
Assistant Accountant for W. Virginia.

From the foregoing reports it will be seen that the road was commenced around September 30, 1850, and revenue was first received thereupon around September 30, 1858.

SUMMARY.

The road cost to construct	$1,694,870.85
Tolls received, less amount of tolls retained by the Va. Central R. R. and used for construction purposes	101,310.70

I have examined the foregoing and found it to be correct.

A. G. POTTER,
Accountant for Virginia.

Va. Acts 1848-49, p. 99.

Chap. 147.—AN ACT TO INCORPORATE THE BLUE RIDGE RAILROAD COMPANY, AND FOR OTHER PURPOSES.

(Passed March 5, 1849.)

1. *Be it enacted by the general assembly,* That for the purpose of constructing a railroad from some point at or near Blair Park in the county of Albemarle, (being the eastern base of the Blue Ridge), to some point at or near Waynesborough in the county of Augusta, being the western base of the Blue Ridge, including the necessary tunnel for a railroad through the Blue Ridge, the Board of Public works be, and they are hereby incorporated and made a body politic and corporate, under the name and style of *"The Blue Ridge Railroad Company,"* and shall be subject to all the provisions of the act "prescribing certain general regulations for the incorporation of railroad companies," passed March eleventh, eighteen hundred and thirty-seven.

2. *Be it further enacted,* That the president and directors of said company shall employ a competent engineer to locate said railroad, so as to connect with the Louisa railroad at or near Blair Park, and to extend thence, including the tunnel aforesaid, to some point at or near Waynesborough; and upon the location of said route and the record of the plats and maps thereof in the clerks' offices of the respective counties through which said road and tunnel shall pass, the title thereto shall become *ipso facto* vested in the commonwealth for the use of said road, according to the provisions of the act last aforesaid.

3. *Be it further enacted,* That so soon as said location shall have been completed, the said company shall, after due advertisement in the public prints, proceed to let the contracts for the construction of said tunnel and of said railroad, with a heavy rail, requiring bonds with approved security, for the faithful execution of said contracts: *Provided,* That said company shall not contract to pay in any one year more than one hundred thousand dollars.

4. *Be it further enacted,* That for the purposes aforesaid, the president and directors of said company shall have power to borrow, on the credit of the commonwealth, a sum or sums of money not exceeding in any one year, one hundred thousand dollars, agreeably to the provisions of the act passed April eighth, eighteen hundred and thirty-nine, "authorizing loans for the payment of certain subscriptions and appropriations."

5. *Be it further enacted,* That in case the Louisa railroad company shall, within twelve months from the passage of this act, accept the provisions thereof, the said Louisa railroad company shall have the exclusive use of said road from Blair Park to Waynesborough, when completed; and in consideration thereof, shall, at their own expense, ever thereafter keep in good repair said railroad and tunnel, and shall annually pay into the treasury of the commonwealth, fifty cents for each passenger, and ten cents for each barrel of flour carried through said tunnel, and ten per cent. on the said Louisa railroad company's charge for transportation of each ton of produce and merchandise, (except gypsum, on which no toll shall be paid,) from any point east of said tunnel to Waynesborough, or from Waynesborough to any point east of said tunnel; a true statement from its books of the number of passengers, barrels of flour and tons of produce and merchandise carried through said tunnel, and of its charges on the produce and merchandise so carried, the said Louisa railroad company shall annually report to the Board of public works: *Provided,* That it shall not be lawful for the Louisa railroad company to charge for the transportation of passengers, flour, produce or merchandise, over said road and through said tunnel, at a greater rate than for the same distance on other portions of its road.

6. *Be it further enacted,* That whenever the cost of the construction of said railroad and tunnel shall have been refunded to the commonwealth by the tolls aforesaid; or whenever the Louisa railroad company shall secure the repayment of such cost in such instalments as may be agreed upon by the said company and said Blue Ridge company, the title to said railroad and tunnel, quit and dis-

charged from the payment of any toll to the commonwealth, shall be absolutely in said Louisa company.

7. *Be it further enacted,* That for the purpose of extending its road from the western terminus of the railroad and tunnel, hereinbefore authorized to be constructed, to the town of Staunton, and with a view to its extension in the direction of the town of Covington, the capital stock of the Louisa railroad company be increased one hundred and fifty thousand dollars.

8. *Be it further enacted,* That the Board of public works shall subscribe, on the part of the commonwealth, to the additional stock of said Louisa railroad company, in the same proportion and upon the terms set forth in the act passed March eighth, eighteen hundred and forty-seven, providing for the extension of the Louisa railroad to the eastern base of the Blue Ridge.

9. *Be it further enacted,* That in case the Louisa railroad company shall decline to accept the provisions of this act as aforesaid, the said Blue Ridge railroad company shall cause books to be opened at such places, and under the direction of such commissioners as may be deemed proper, to receive subscriptions of stock, in shares of fifty dollars each, to an amount not exceeding sixty thousand dollars, for the purpose of constructing a railroad to the town of Staunton, and with a view to its extension in the direction of the town of Covington, and for providing everything necessary for trasportation between Blair Park and Staunton.

10. *Be it further enacted,* That when six hundred shares shall have been subscribed by individuals and corporations, other than the commonwealth, solvent and able to pay the same, the Board of public works shall subscribe for nine hundred shares; and thereupon the said Blue Ridge railroad company shall commence the construction of said railroad; and afterwards, whenever one hundred shares are subscribed by individuals and corporations as aforesaid, the Board of public works shall in like manner subscribe one hundred and fifty shares, until the aggregate sum thus subscribed shall amount to one hundred and fifty thousand dollars, which shall be regarded as the capital stock of said Blue Ridge company.

11. *Be it further enacted,* That in order to pay the subscriptions authorized in the preceding section, the Board of public works shall have power to borrow, on the credit of the commonwealth, the money necessary, agreeably to the provisions of the act aforesaid, passed April ninth, eighteen hundred and thirty-nine.

12. *Be it further enacted,* That in case of the construction of said railroad to the town of Staunton, by the Blue Ridge company, the said company shall, in all respects be entitled to the privileges, and subject to the obligations and restrictions hereinbefore set forth, as imposed upon and granted to said Louisa company, in the event of its acceptance of the provisions of this act.

13. *And be it further enacted,* That if the Louisa railroad company shall accept the provisions of this act, the said company shall, in case of such acceptance, be bound to transport passengers and commodities from any point on its line of road, to its point of intersection with any other railroad, or from such point of intersection, to any other point on its said line, at no higher charge per mile for the said passengers and commodities than would be charged by the said company upon the same passengers or commodities transported for the like distances on any other part of its road.

14. This act shall be in force from its passage.

All passages underscored are in italics in original print. Compared with original and found correct.

L. M. RICHARDS,
A. G. POTTER.

Dec. 17, 1914.

Va. Acts 1852, p. 125.

Chap. 156.—An ACT to amend the act, entitled "an act to incorporate the Blue Ridge railroad company, and for other purposes," passed March 5, 1849, and repealing so much of said act as restricts said company from borrowing and contracting to pay in any one year more than one hundred thousand dollars.

(Passed March 3, 1852.)

1. *Be it enacted by the general assembly,* That the third section of the act passed March fifth, eighteen hundred and forty-nine, entitled "an act to incorporate the Blue Ridge railroad company, and for other purposes," be re-enacted and so amended, as to read as follows, to wit: That so soon as said location shall have been completed, the said company shall, after due advertisements in the public prints, proceed to let the contracts for the construction of said tunnel and of said railroad with a heavy rail, requiring bonds with approved security for the faithful execution of said contracts.

2. That the fourth section of said act be re-enacted and so amended, as to read as follows, to wit: That for the purposes aforesaid, the president and directors of said company shall have power to borrow on the credit of the commonwealth the money necessary to meet the payments for work already done or hereafter to be done in constructing said tunnel and railroad, as they may be called for by the estimates and drafts of the engineer of said company. But such money shall be borrowed so that there shall be added to the public debt on this account not more than one hundred and fifty thousand dollars on the first day July, eighteen hundred and fifty-two, one hundred and fifty thousand dollars on the first day of January, eighteen hundred and fifty-three, one hundred thousand dollars on the first day of July, eighteen hundred and fifty-three, and one hundred thousand dollars on the first day of January, eighteen hundred and fifty-four.

3. *Provided,* That the Board of public works shall require of the Virginia Central railroad company to pay an adequate compensation, to be agreed upon by said board and said company, for using

such portions of the Blue Ridge railroad as may be finished prior to the completion of the tunnel. But this provision shall not affect the rate of toll required to be paid by said Virginia Central railroad company for using the Blue Ridge railroad and the tunnel after the completion thereof, under the provisions of the aforesaid act, entitled "an act to incorporate the Blue Ridge railroad company, and for other purposes."

4. This act shall be in force from its passage.

Compared with original and found correct.

L. M. RICHARDS,
A. G. POTTER.

Dec. 17, 1914.

James Park, C.P.A.
Arthur G. Potter, C.P.A.
W. A. Campbell, C.P.A.
Chas. Griswold Bourne
Fellow Amer. Ass'n. Pub. Acc.

Telephone
Cortlandt 3915

Cable Address
"Parkpotter" New York

PARK, POTTER & CO.
Certified Public Accountants
New York, Chicago, Cincinnati
and London, England
149 Broadway, New York

December 19th, 1914.

Chas. E. Littlefield, Esq.,
61 Broadway,
New York, N. Y.

Dear Sir:—

I enclose herewith a certified copy of the minutes of the Board of Public Works under date Thursday, the 27th April, 1858, relating to the Blue Ridge Railroad. Attached to the last sheet of this is a copy of an original document which I found in the Blue Ridge Railroad box in the office of the Corporation Commission and you will notice that it is signed by myself and Mr. Leeds. These documents appear to give all of the information you require at the recent period.

Yours very truly,

A. G. POTTER.

Dic. AGP/BP.

DEPARTMENT OF THE STATE CORPORATION COMMISSION.

Received Dec. 21, 1914 (C. E. L.)

Tuesday 27 April, 1858.

Present all the members.

The following communication was submitted to the Board from Mr. Fisk, Chief Engineer.

Richmond, Va., 31 March, 1858. To the Board of Public Works, Gent.

At your request I examined the line of the Blue Ridge railroad some weeks ago so far as I thought it necessary to enable me to express an opinion upon certain matters of difference between the Blue Ridge and Virginia Central railroad companies. My report upon that examination dated the 20th ult. was made the basis of a proposition by you to the Virginia Central Railroad Co. for the settlement of the differences between the two companies—and that company having declared to accept it, for the reason in part, that I had not in their view, taken into consideration all the matters of difference. I was requested by you to make such further examination into the condition of the road as would be necessary to enable me to give an opinion that would cover the whole case.

I desire to say in regard to the examination made some weeks ago that I undertook it not as an umpire between the parties, but as an Engineer called upon by one of the parties to report upon certain matters of difference, and which I understood were those to which by attention had been and would be directed by the other party.

The last annual report of the Va. Central railroad Co.—which I have only recently examined, would seem to show that with the ex-

ception of the subject of arching in the Blue ridge tunnel, which I did not take into consideration for the reason stated in the note to my report of the 20th ult.—and certain small cross ties, which I was informed had been taken out and replaced by larger ones I did in fact report upon all the matters to which attention is therein particularly directed. I will quote sufficient to show this:

The Chief Engineer under date 21st September 1857 (see pages 19-20-21) says:

"I have made an examination of that part of the Blue Ridge railroad between Kelly's cut and the western end of mountain track and respectfully submit a brief report of the state of that work before it is finally received by you.

"The laborers are still engaged in completing the ballasting and ditching and will probably finish during the present week; the track will be finished at the same time—It gives me pleasure to state so far as skill can render it so, the road is in excellent order, reflecting credit upon those entrusted with its construction. There are some points however to which I would call your attention—where in spite of the care shown in the construction of the work, very considerable expense must be incurred in the future on account of slides. This should be taken notice of in the settlement between you & the Board of Public Works, one of these points is at Kelly's cut. The next point is at the embankment over Robinson's hollow &c—another point to which I would call your attention is the embankment immediately east of the main tunnel &. "It would be manifestly unfair to charge the expense to be incurred at these points to repairs of road. It is construction, and as such belongs properly to the cost of the Blue Ridge railroad. This I presume will be paid for by the Board of Public Works, at all events some provision should be made for this work before it is received by you. I have not thoroughly examined the main tunnel. I am however satisfied from such observation of the work as I have able to make that it is perfectly safe for the present. It may be necessary to arch a portion of the tunnel now unprotected, to provide against disintegration, and if so it should be done at once. I presume that the distinguished gentleman now in charge, and who is perfectly familiar with the roof will in-

dicate any portions of which there is any doubt, I think we may run through the tunnel in about two weeks."

After this report was made by the Chief Engineer some little additional arching was done in the tunnel. Upon undertaking the further and recent examination of the road I requested of Messrs. Ellet & Whitcomb representing the Virginia Central R. R. Co. that I should be furnished with a detailed statement of what that company thought necessary to the completion of the road, and an estimate of the amount of work done that in their opinion should be done in thus completing it, and of its probable cost. Mr. Ellet handed me when on the line of the road a statement (see copy of it appended) of the points at which he thought more work should be done (but not the desired estimate in detail of quantities and probable cost) and he, the Chief. Engr. of the Virginia Central R.R.Co. and myself passed over the line together and examined these points. A considerable amount of the work that is claimed should be done, outside of the Blue ridge tunnel, would I find, be excluded from consideration by me if I am to be governed by your resolution of the 9th February 1854.

I find also that much other work claimed as above would be excluded from consideration by me if I am to be governed by what has been heretofore been claimed on the part of the Blue Ridge railroad company, to be all that can be required of them in regard to the width to be given and arching to be done at the Blue ridge tunnel—and which was, as I understand that that tunnel is to be considered as in fact completed in these respects as between the two companies so soon as the cars of the Va. Cen. R.R.Co. could be safely run through it—with proper care on the part of the Company notwithstanding ultimately and perhaps at an early day it would be very desirable, if not necessary to widen out and enlarge the unarched portions of it to the width and area of its arched portions—and to arch such further portions of it, as time may shew to be necessary. There is a part of the work, however that it is claimed should be done by the Blue Ridge railroad Co. that that company is bound to do, even if the resolution of the 9th Feb. 1854 and the above views as to what is to be considered as a completion of certain

parts of the road should be rigidly adhered to and govern the settlement between the two companies.

Having thus far prepared this report I thought it proper to call the attention of the Board informally to the resolution of the 9th February 1854—and the above views as to the completion of certain parts of the road—for the purpose of ascertaining whether it is their desire that said resolution shall be rigidly applied by me in all cases—and that would seem to have been the action of the Blue ridge railroad company in regard to the completion of these parts of the road, shall be regarded by me as a final action on that subject by that company. I thought it my duty to call the attention of the Board as above—for I am still acting not as an umpire between the parties;—but as an Engineer called upon by and acting for but one of the parties. And having obtained from the Board informally their views in regard to the above matters I have embodied, as understood by me in the form of a preamble and expressed my opinion—under those views upon the matters submitted to me, in the form of a resolution, in the hope that if the preamble correctly states your views, and the resolution meets with your approval that you will place both and particularly the former, or what would be equivalent to it on your journal, to show upon what grounds and for what reasons the present report differs so materially from my report of the 20th ult. and which is mainly that the Board do not adhere rigidly to their resolution of the 9th February 1854, and are willing to provide for giving to the Blue ridge tunnel the area of cross section originally intended to be given to it.

Form of preamble and resolution referred to above.

Charles B. Fisk, Civil Engineer having been requested by this Bd. since his examination of and report upon the Blue ridge railroad last month—to make a further examination of and report upon said road—and said Fisk having been informed by this Board.

1st. That the examination and report desired should only extend over and apply to that portion of the road which lies west

of Greenwood depot as the portion which lies east of that depot was long since delivered to and received by the Virginia Central railroad Co.

2nd. That it was the desire of the Board that he should in his report give an estimate of what would probably be the cost of such work, as in his opinion is necessary to complete the above portion of the road west of Greenwood depot, upon a fair and just interpretation of the law authorizing and directing the Board of Public works to construct the Blue Ridge railroad.

3rd. That in forming his opinion as to whether the above portion of the road has in all respects been completed in the manner contemplated by the law, this Board is willing that the specifications as to the dimensions and plans of the various works and structures upon the road originally adopted by the B. P. Works—except so far as a deviation therefrom may have been made by the order of said board or rendered necessary or advisable for good and sufficient reasons—in an engineering point of view—shall be his guide.

4th. That he should take into consideration in forming his opinion as to the amount of work to be done by this Board in completing the road, the resolution adopted by them on the 9th February 1854 by which it was declared "That after the track has been laid upon any part of the location of the Blue ridge railroad, and the cars of the Virginia Central railroad are running upon the same the B. P. Works will consider that the work has been received by said company, and will not hold themselves bound to do any further work upon it except the ballasting as per resolution of 10 December 1853." but with the understanding that this Board is willing that said resolution shall not be rigidly adhered to in the case of any considerable expenditures that ought now or very soon to be made at points for work properly chargeable to construction—such as securing the embankment at Robinson's Hollow, against sliding, the lengthening if necessary of the culverts at Goodloes hollow, Robinsons hollow and Dove Spring hollow. And said Fisk having presented to the Board his report and estimate, and the same having been considered—the following resolution was moved and adopted.

Resolved that this Board in its character as the Blue Ridge railroad company, will deliver the entire line of the Blue ridge railroad to the Virginia Central railroad Co. upon the following terms and conditions—so soon as the same shall have been assented to by the Company.

1. That the Virginia Central railroad Co. shall from the time that they commence running their cars through the Blue ridge railroad tunnel pay the tolls for the use of the Blue ridge railroad specified in Section No. 5 of Chapter 147 which passed 5 Mar. 1849 said time to be not later than the 1st May 1858.

2. That the Virginia Central railroad Co. shall undertake to do all the work required to complete the construction of the Blue ridge railroad, and in consideration thereof shall be paid by the Blue ridge railroad Company as follows, viz:

For widening and enlarging the cross section of the long unarched portion of the Blue ridge tunnel, at the eastern end thereof to an area that shall not exceed further than is necessary in blasting the area of the arched portions of said tunnel, the actual cost of such widening and enlargement, but with the understanding that no expenditures for those purposes after the 1st day of May 1860, shall be paid for by the Blue ridge railroad co. & that the total amount thus expended by the Virginia Central railroad Co. before that day to be paid for by the Blue ridge railroad Co. shall not exceed $19,358.

For arching and lining those portions of the Blue Ridge tunnel now unarched between the eastern and western arched portions thereof (say 692 feet in length) to such extent and for such length as may be found necessary—and the excavation and all other work necessary for and consequent upon the said arching, the actual cost of such arching and work, but with the understanding that no expenditures for these purposes after the first day of May 1863 shall be paid for by the Blue Ridge railroad Co. and that the total amount thus expended by the Virginia Central railroad Co. to be paid for by the Blue Ridge railroad Co. to the extent and for such

length as above provided—shall not exceed $38½ per foot linear lengthwise of the tunnel of the arching actually done.

For completing the ballasting, completing the track through Kelly's cut, cleaning outside ditches, lengthening the culverts at Goodloe's hollow, Robinson's hollow and Dove Spring hollow and three square drains between Goodloe's hollow and Blue Ridge tunnel, putting in where needed cattle stops, securing the high embankments near and east of the Blue Ridge tunnel and at Robinson's hollow against sliding, clearing out cuts and removing material in danger of sliding into them, widening the little tunnel near Robinson's hollow and obtaining the grade through said tunnel, and all other work necessary to the completion of the road West of Greenwood depot so far as the same is properly chargeable to construction and to the Blue Ridge railroad Co., the actual cost of such work, but with the understanding that no expenditures for the above puropses after the 1st day of May, 1860—shall be paid for by the Blue Ridge Railroad Co.—and that the total amount thus expended by the Virginia Central road Co. shall not exceed $24,465.

3. That the Virginia Central railroad Co. shall not arch any more of the portions of the Blue Ridge tunnel referred to as provided above, than is absolutely necessary with a view to the safe use of said tunnel,—and that if either in whole or in part any part of the said portions—can be rendered safe by adopting iron in place of brick and stone and at less cost, that they shall do so.

4. That the Virginia Central railroad Co. shall while doing the work contemplated in this resolution make a report to this Board at its regular monthly meetings—of the actual cost of the work done by them thereunder during the months respectively immediately preceding and ending on the last days of said months and in making such reports said Co. shall sustain the same by such vouchers as in the opinion of this Board are proper & reliable.

5. That all accounts heretofore presented for work done on the line of the road and which were rejected by its engineer for the reason that they could not be allowed under the resolution of the

Board of 9 February 1854 and which have not been allowed by this Board shall be considered as rejected by this Board and that the arrangements now proposed under this resolution shall be considered as covering all matters of account of the Virginia Central railroad co. against the Blue Ridge railroad except those for transportation and freight and iron not heretofore allowed—and

6. That the payments for work done under this resolution to the Virginia Central railroad Co. shall be made from time to time when presented to and approved by the Board or as soon thereafter as there are funds in hand applicable thereto.

Respectfully submitted, C. B. Fisk, Engineer. & Copy of the memorandum by Mr. Ellet referred to above.

Mountain Top, March 25, 1858.

Memorandum of work to be done to complete the Blue Ridge road west of Greenwood.

1. The road bed to be neatly graded and finished on top everywhere.

2. The ballast to be brought level with the top of the ties, of good stone and properly broken and to be made as wide as the lengths of the ties (8 feet) at top with slopes of 1 to 1.

3. The long embankment at Waynesboro to be raised & widened.

4. The first rock cut east of Waynesboro to be sloped on the north side chiefly, but also to some extent on the south side.

5. The next cut east of ——— ditto.

6. The third cut do.

7. The cut at turntable. do.

8. The small bridge west of tunnel should be protected by tin.

9. Tunnel—west end—remove threatening rock.

10. East end, remove threatening rock, & turn off the water which falls on the track.

11. Tunnel to be arched between the present arches 672+20= 692 feet—Excavation to be widened so as to admit the arch.

12. Unarched tunnel to be widened say 1200 cubic yards to be removed to give the specified dimensions.

13. Leakage of tunnel.

14. Embankment east of tunnel now sliding to be completed by the State's force.

15. First cut east of tunnel, by turnout to be sloped, ditches to be opened.

16. Wommeldorf's cut say 700 feet long to be sloped—Cattle guards to be made here.

17. Culvert (first bank east of Wommeldorf's) now filled up and buried to be opened & lengthened on the north side.

18. Fourth cut from Wommeldorf's to be sloped &c.

19. The parapet and wings of the culvert under the first bank west of Goodloe's to be raised.

20. The lower end of culvert under the 3d bank west of Goodloe's to be uncovered and lengthened.

21. Two road crossings wanted—one for Hansboro, & one for Hansboro & Goodloe.

22. Second cut west of Goodloe's hollow to be ?

23. First cut west of Goodloe's to be widened & sloped on both sides.

24. Goodloe's hollow—Culvert too short, needs to be lengthened or to have good and high parapets (say 9 feet high) & supported by buttresses culvert to be cleaned out.

25. Little tunnel to be sunk deeper at bottom through the tunnel & approaches. The tunnel to be widened.

26. Threatening rock at both approaches of the little tunnel of which there is a great deal on both sides of the east approach to be removed.

27. Robinson's hollow bank to be sustained.

28. Culvert under Robinson's hollow to be lengthened at both ends say 20 feet.

29. Road crossing wanted east of Robinson's hollow.

30. McElroys cut some portions of the slopes need to be removed, on both sides.

31. Brookville tunnel—west end 500 yards earth and rock to be removed from slide and spread over top of arch.

32. Brookville tunnel west end to be sloped off.

33. Dove Spring hollow—culvert to be lengthened—say 20 feet at each end.

34. Kelly's cut, rock now dangerous, or threatening soon to become so to be removed.

After consideration the following preamble & resolution were adopted, viz:

Charles B. Fisk, Civil Engineer, having at the request of this Board submitted a report dated the 31st ult. upon the cost of completing the Blue Ridge railroad in accordance with the views of this Board, in respect to the manner in which the said railroad should be completed, which views are correctly stated in said report, viz: that the whole Blue Ridge railroad including the tunnel should be completed in a substantial manner before the Virginia Central railroad company could by law be required to receive and use it and pay the prescribed tolls—and said report having been communicated to a committee of the Board of Directors of the Virginia Central Railroad Co. & they having expressed a desire that the amounts to be expended in completing the said road and tunnel by the Virginia Central Railroad Co. in case they should undertake to complete the said Blue Ridge railroad and tunnel should be fixed and definite in so far as regards the estimated amount of tolls designed to cover that expenditure, and also that the mode of payment proposed in said report should be somewhat changed, thus releasing the Board of Public Works from all responsibility for the completion of said road and tunnel which responsibility is fully assumed by said Virginia Central railroad company—

Be it therefore

Resolved, that this Board in its character as the Blue Ridge railroad company will allow the Virginia Central Railroad Company to use with their trains the entire line of the Blue Ridge railroad including the main tunnel upon the following terms and conditions.

1. The Vrginia Central Railroad Co. shall from the date when their use of the said railroad begins keep a correct account of the full tolls for the use of the said road and tunnel upon travel & tonnage as specified in the Act passed March 5, 1849, ch. 147, Sec. 5, commencing from the time of their cars beginning to run through the Blue Ridge tunnel less such portion thereof as the said company are under obligation to pay into the Treasury of the Commonwealth for running over certain parts of said railroad as per award of Charles B. Fisk made on the 21 August, 1856, and the said Virginia Central Railroad Co. shall thus keep the account of full tolls until they amount with the deduction aforesaid in the aggregate to the sum of Seventy thousand dollars, which sum is regarded and considered as sufficient for the completion of said road and tunnel, and when the said tolls with such deduction shall amount to that sum then and thereafter the full tolls shall be paid by the said company into the Treasury of the Commonwealth — and the Virginia Central Railroad Co, undertakes to complete the Blue Ridge railroad and tunnel in consideration of having the use of the same in its present unfinished condition the value of that use being fixed at the above sum of 70,000 dollars.

2. From the time the full tolls become payable into the Treasury as aforesaid the Blue Ridge railroad and tunnel shall be considered as completed as required by the Act of 1849 as aforesaid and the Blue Ridge Railroad Co. shall be forever exonerated from any other expense on said work.

3. That the above terms and conditions are made with the understanding that the Virginia Central Railroad Co. will prosecute with proper diligence the completion of the Blue Ridge railroad and tunnel, they having by this arrangement assumed the responsibility to the public for making the work secure and substantial and such as the law requires.

4. The Virginia Central railroad Co. are to furnish quarterly statements on the first days of October, January, April & July respectively of each year of the amounts of tonnage and passengers, and tolls as above thereon, until the time when full tolls shall be paid into the Treasury as aforesaid when the statements are to be made annually thereafter as contemplated in the Act of 1849 aforesaid.

5. That a copy of these proceedings be furnished the Virginia Central railroad Co. and that they be requested to inform this Board of their agreement to the same.

At a meeting of the Board of Directors of the Virginia Central Railroad Company held in Staunton, May 5th, 1858.

The following communication from the Board of Public Works in regard to transferring the Blue Ridge Railroad & Tunnel to the Virginia Central Railroad Company, was submitted by the President as follows, viz:

See communication of the Board of Public Works dated Apr. 27, 1858.

On consideration whereof

Resolved, that the Blue Ridge Railroad is accepted by this Company on the terms & conditions contained in the foregoing paper.

True copy from the minutes.

J. GARRETT, Sec'y.

True Copy,
A. G. POTTER,
E. P. LEEDS.

BRIEFED
Acceptance by the Va. Cent. Railroad Co. of the terms adopted by the B. P. W. on the 27 Apr., 1858.

Received May 8, 1858.

COMMONWEALTH OF VIRGINIA.

Department of the State Corporation Commission.

I, R. T. Wilson, Clerk of the State Corporation Commission, do hereby certify that the foregoing is a full, true and correct copy of an extract from the record of the proceedings of the Board of Public Works Tuesday, April 27th, 1858, relative to Blue Ridge Railroad, copied from Journal M of the records of the Board of Public Works, pages 269 to 278, both inclusive, which original record is now on file in this office.

In testimony whereof I hereunto set my hand at Richmond, this 18th day of December, A. D. 1914.

R. T. WILSON,
Clerk to the Commission.

FILED

MAR 17 [illegible]

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[illegible]

Supreme Court of the United States

[illegible]

[illegible]

COMMONWEALTH OF VIRGINIA

[illegible]

vs.

STATE OF WEST VIRGINIA

REPORT OF SPECIAL MASTER

[illegible]

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 4, Original.

COMMONWEALTH OF VIRGINIA,
Complainant,

v.

STATE OF WEST VIRGINIA.

I, CHARLES E. LITTLEFIELD, SPECIAL MASTER APPOINTED UNDER AN ORDER MADE IN THE FOREGOING CASE. RESPECTFULLY SUBMIT THE FOLLOWING REPORT:

PARAGRAPH 1 OF DECREE.

1. THE AMOUNT OF THE PUBLIC DEBT OF THE COMMONWEALTH OF VIRGINIA ON THE FIRST DAY OF JANUARY, 1861, STATING SPECIFICALLY HOW AND IN WHAT FORM THE SAME WAS EVIDENCED, BY WHAT AUTHORITY OF LAW AND FOR WHAT PURPOSES THE SAME WAS CREATED, AND THE DATES AND NATURE OF THE BONDS OR OTHER EVIDENCE OF SAID INDEBTEDNESS.

The parties agree to the extent of $32,919,863.93 upon the amount of the public debt of the Com-

monwealth of Virginia on the 1st day of January, 1861 (Rec., p. 215). The plaintiff claimed at the time of making the joint schedule A-1, p. 1, that there should be added to this aggregate:

First—		
Unpaid and accrued interest from July 1st, 1860, to December 31, 1860, on the public debt.....		$ 977,209.89
Second—		
Bonds of the Commonwealth of Virginia, held by the Sinking Fund $1,329,557.20		
Unpaid and accrued interest as above..	39,686.72	
Total		1,369,243.92
Bonds of the Commonwealth held by the Board of Public Works .....$	146,500.00	
Unpaid and accrued interest as above..	4,395.00	
Total		150,895.00
Bonds of the Commonwealth held by the Literary Fund..	1,085,067.33	
Unpaid and accrued interest as above..	31,776.02	
Total		1,116,843.35

(Rec., p. 215.)

These items were all in the first instance contested by the defendant. The item of $977,209.89, unpaid and accrued interest, is conceded by the defendant and I treat it as a part of the public debt.

It is conceded that the bonds held by the Board of Public Works were bonds of the Commonwealth placed in its hands for sale in connection with the prosecution of the works under its charge, but that the bonds referred to were never issued, and therefore never became a part of the public debt. For this reason this item has been withdrawn by the plaintiff.

There remains in controversy the bonds in the Sinking Fund and the Literary Fund. Whether the bonds of the State held by these two funds are within the meaning of the Decree, a part of "the public debt of the Commonwealth of Virginia" is the question. This involves a review of the constitutional and statutory provisions creating them.

Sinking Fund.

The Constitution of Virginia required the maintenance of a Sinking Fund to

> "be applied to the payment of the interest of the State debt and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the Sinking Fund, after the payment of such interest, shall be *invested in the bonds or certificates of debt* of this Commonwealth or of the United States or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable."
>
> (Con. Va. Art. 4, Sec. 29, p. 47.)

The sum necessary was to "be set apart annually from the accruing revenues." (Con. Va., Art. IV., Sec. 29; Code Va. 1860, p. 47.) Proceeds of the "sale of the stocks held by the Commonwealth for internal improvement and other companies, if made before the payment of the public debt" were to "constitute a part of the Sinking Fund" (do. Sec. 30). The "Auditor of Public Accounts, Register and Secretary of the Commonwealth for the time being" were constituted a "corporate body under the style of 'The Commissioners of the Sinking Fund.' * * * For the purpose of managing, preserving and applying the Sinking Fund created by this Act." (Code of Va. 1860, Chap. 44, sec. 6, p. 261.) The Auditor of Public Accounts was required, "to pay into the Treasury of the Commonwealth [not the Treasury of the Commissioners of the Sinking Fund] annually thereafter out of the accruing revenues" the specified "portion of the sum set apart for the Sinking Fund". He was also required to "pay into the Treasury to the credit of said Fund" the amount of the semi-annual interest. (do. Chap. 44, sec. 4, p. 260). To provide for subsequent debts, he was also required to "pay in like manner into the Treasury", that is, of the Commonwealth, "to the credit of the Sinking Fund, one per centum, &c." and also "in like manner into the Treasury to the credit of the said fund * * * the amount of the semi-annual interest", and in case of coupon bonds, the "amount of the interest" was to be "set apart and paid into the Treasury to the credit of said fund" thirty days in advance of their becoming due. (do. Chap. 44, sec. 5, p. 261.) It was "their duty to apply the moneys appropriated out of the said Fund to the payment

of the interest and redemption of the principal of the State debt," &c., and to "invest any part of the appropriations * * * which cannot be so applied to the purchase of public stock" (do. Sec. 7, p. 261). Instalments of interest and sums for the redemption of any part of the principal of the debt were to be paid by special order of the Commissioners entered on their minutes authorizing "the second auditor to issue his warrants on the treasury". (do. Sec. 10, p. 261.) The second auditor was required to "keep the accounts of the Sinking Fund with the Treasury in such manner as to show distinctly at all times the amount of the transactions on account of each appropriate head of receipts and expenditures," (do. Sec. 13, p. 262).

> "All moneys belonging to the Sinking Fund shall be paid into the Treasury on the warrant of the second auditor and shall be paid out in like manner when authorized by the Commissioners of said Fund" (do. sec. 14, p. 262).
>
> "The Treasurer [State Treasurer], shall receive and pay the moneys belonging to the Sinking Fund as herein required. He shall keep a distinct account of the same and report to each session of the Legislature the aggregate receipts and disbursements on account thereof * * *" (do. sec. 15, p. 262).

The Treasurer of the Commonwealth was required to

> "keep separate accounts of the money *belonging to the Literary Fund*, to the Fund for Internal Improvement, *to the Sinking Fund* and to the Washington Monument Fund, showing the receipts and disbursements on account of each" (Chap. 45, Sec. 31, p. 270).

Semi-annual interest on the debt of 1839 was to "be paid out of the Public Treasury" but no part of it "out of the Sinking Fund," thus recognizing the Sinking Fund as being in the Public Treasury (Chap. 44, Sec. 19, p. 263).

Literary Fund.

By an Act passed March 3, 1819 (Rev. Code of Va., 1819, Vol. 1, page 82), certain public officials were

> "constituted a body corporate and politic under the denomination of the President and Directors of the Literary Fund, with power to sue and be sued, plead and be impleaded, and to hold lands and tenements, goods and chattels, and the same to sell, dispose of or improve for the purposes hereafter mentioned" (Chap. 33, Sec. 6).

and

> "All sums of money which have accrued or may hereafter accrue to the Literary Fund in consequence of the appropriations thereto already, now or hereafter to be made,"

were vested in said persons (do., Sec. 6).

Actions were authorized to be brought "in the name of the said President and Directors" (do. sec. 7), and in an Act consisting of 22 sections an elaborate plan for the management of the Literary Fund was prescribed.

March 2, 1821, "An Act concerning the Literary Fund" was passed (Acts of Va., 1820-1821, p. 12). It repealed "all acts and parts of acts coming within the purview of this Act," (Sec. 13, p. 14). It changed the personnel of the Board (Sec. 1). It

did not vest in them the money which was vested in the original board. It provided "that all moneys accruing for the benefit of the Literary Fund" should "be paid into the public treasury and shall be kept by the Treasurer of the Commonwealth *ex officio* in the same manner that *other public moneys* are kept by him except only that there shall be a separate account raised therefor in the name and for the benefit of the Literary Fund" and that it should only "be checked or drawn for in his official capacity as such Treasurer" (Sec. 3, p. 13). The State Treasurer was to "be accountable for the moneys so paid into the Treasury" (Sec. 4). Dividends and interest upon stock belonging to the Fund and interest on moneys loaned were to be "paid into the Treasury" (Sec. 5). Sheriffs collecting executions were "to pay the same into the Treasury" (Sec. 6). "Money belonging to the Literary Fund" could "be paid out of the treasury" only on a "warrant from the auditor drawn in pursuance of an order of the president and directors" (Sec. 7). An accountant was provided for who was required,

> "to keep distinct accounts of all the stock and other property belonging to the Literary Fund and distinct accounts of all monies authorized to be paid into the Treasury and to be drawn therefrom on account of said Fund."

And he was to be furnished by the auditor with

> "statements of all warrants for the payment of money into the Treasury for the benefit of the Literary Fund" (Sec. 11, p. 14).

"An Act to amend the several Acts concerning the Literary Fund" passed February 25, 1829 Acts of Va. 1828-9, page 13), provided for a detailed plan for the supervision of the Fund, and Section 13, vested in the second auditor, "The Superintendent of the Literary Fund, all the power heretofore vested in the president and directors of the Literary Fund," with certain exceptions not material, and created a board with certain supervising powers "to perpetuate the corporation heretofore established."

Referring to this corporation the Code of 1860, page 414, provides:

> "The Governor, Treasurer, two auditors and register of the land office shall be a corporation under the style of 'The Board of the Literary Fund' "

and be vested with all the rights and powers here tofore vested in the President and Directors of the Literary Fund (Chap. 78, sec. 1). There is no provision in the Code vesting this "corporation" with any title to the funds or property of the Literary Fund. "Any money which ought to be paid into the public Treasury to the credit of the Literary Fund" is to be recovered not by the Board but by the second auditor of the Treasury (do. Chap. 78, sec. 7—Chap. 72, sec. 1). The Board is authorized to

> "*invest* all the unappropriated capital and income of the Literary Fund in certificates of debt of the United States *or certificates of debt* of or guaranteed by this State or in stocks of banks incorporated by it" (do. sec. 8, p. 414).

It is provided that

> "All money belonging to the Literary Fund shall be received into and paid out of the *Public Treasury* upon the warrant of the second auditor."

The only control that the Board has over this fund is by virtue of a provision that,

> "no warrant for paying out such money shall be issued without the special authority of the Board" (do., sec. 13, p. 415).

The second auditor adjusts, settles and balances all accounts of persons "having accounts with the Literary Fund" (do. Sec. 14, p. 415). The board does not have the right to the possession of "securities for money belonging to the Literary Fund," as all such securities are to be deposited "with the second auditor for safe keeping" (do. sec. 15, p. 415).

"Money, stocks or other property" are all referred to as belonging "to the Literary Fund" undoubtedly for convenience and identification. (Code Va. 1860, Chap. 79, sec. 1, p. 416.) As the money belonging to this Fund is in the Treasury of the Commonwealth as a part of its common assets kept in "a separate and distinct account," "the money, stocks or other property" would seem for the same reason to be the property of the State in the "Literary Fund."

The Courts of Virginia in a recent case have authoritatively construed legislation of a similar character relating to the Eastern State Hospital, which in its character is more indicative of constituting the Board in question a separate legal entity or a corporation independent of the State

than is the legislation relating to the Sinking Fund or the Literary Fund.

By an Act passed March 6, 1841 (Acts of Va. 1840-1841, Chap. 15, page 38), the

> "present Directors of the Hospital in the City of Williamsburg"

were constituted

> "a body politic and corporate to have perpetual succession by the name of the 'Directors of the Eastern Asylum for the maintenance and cure of insane persons' and by that name may sue and be sued and may and shall have and use a common seal and are enabled to take and hold any estate real or personal given or to be given to the said Asylum or to themselves for the use thereof" (do. sec. 1).

By the Code of Virginia, 1860, Chap. 85, sec. 2, page 435, it is provided that

> "The directors for the Asylums at Williamsburg and Staunton shall respectively continue to be corporations,"

the first being known as the "Eastern Lunatic Asylum."

The name of the hospital at Williamsburg was changed to the "Eastern State Hospital" and it was provided that its directors should continue to be a corporation (Va. Code, annotated, Sec. 1661). Neither of the Codes appear to have changed the powers vested in the corporation. The directors of this hospital are provided for by the Constitution (Art. XI, Sec. 149-150, p. 248). The Board has the "management of the Hospital for

which it is appointed" (sec. 1662). Its funds are to be deposited in a "solvent bank" designated by the Board and Commissioners (sec. 1665). Unlike the Sinking and Literary Fund its funds are not to be deposited in the State Treasury. They are "disbursed by checks drawn by the Superintendent of the Hospital and approved and countersigned by the Chairman of said special board" (sec. 1666). This separates the fund of the Hospital from the general fund of the State and the Treasury of the State. The directors have power to release claims for the "removal, maintenance or care of an insane person" (sec. 1708). In addition to the general corporate right to sue originally granted to the board, it has the right to sue "in the name of the hospital or of the Commonwealth" (sec. 1709).

While in this Code the State Treasurer is required to keep separate accounts of the money belonging to the Literary Fund, Interest on the Public Debt and the Sinking Fund, and the Miller Fund, the Hospital Fund is not recognized as being in his hands and he is not required to keep any account thereof (sec. 781).

Eastern State Hospital v. *Graves,* 105 Va. 151, was a suit brought by the hospital to recover sums due for board and medical services and the question was whether the Statute of Limitations could be pleaded in the suit, it being contended on the part of the plaintiff that the hospital was in effect the State and the Statute of Limitations did not run against the State, and therefore it could not be pleaded; and in holding that the Statute of Limitations could not be pleaded, the Court said that the

> "hospital was created and exists for purely Governmental purposes—is a public corpora-

> tion, governed and controlled by the State and acts exclusively as an agency of the State * * * that it has no stockholders, no members even except directors having no interest in it or its affairs, who are appointed by the Governor and with the consent of the Senate and are in fact public, rather than corporate officials endued with corporate being for a more convenient administration of the duties imposed upon them by law * * * if not collected the loss falls wholly upon the State, and if there is a recovery it will be for the benefit of the State and the State alone—not for the benefit of the directors nor for the benefit of any subordinate division of the State but for the whole people—the State at large" (p. 153).

The same doctrine in substance had been previously announced in *Maia* v. *Eastern State Hospital*, 97 Va., 507. The case of *Eastern State Hospital* v. *Graves*, expressly overrules the case of *McClanahan* v. *Western Lunatic Asylum*, 88 Va., 466, which holds that a plea of the Statute of Limitations was good on the ground that the asylum

> "is a corporation—an authorized legal entity—a personality in law with power to sue and be sued" (p. 468),

The McClanahan case seemed to turn almost wholly upon the fact that the Asylum had the power to sue and be sued. It is not only expressly overruled on that point by *Eastern State Hospital* v. *Graves*, but inasmuch as neither the Commissioners of the "Sinking Fund" or the "Literary Fund" have the power to sue and be sued, it would not be in point as to those funds in establishing that the respective boards were organized legal entities and personalities in law as distin-

guished from mere public agencies. This construction given to a state statute by the Supreme Court of Virginia having now become the well settled law of Virginia, will be held to be the authoritative construction of that statute by the Federal Courts as no Federal question is involved.

> Soper *v.* Lawrence Bros., 201 U. S., 359-370.
> N. Y. Cent. R. R. Co. *v.* Miller, 202 U. S., 584, 595.

On the authority of that case and by reason of the fact that they have neither stockholders or assets or control over assets and its officers are public, rather than corporate officials, invested with corporate capacity for convenient administration, and the funds are kept in the State Treasury subject to the control of its Treasurer, he being responsible therefor, in separate and distinct accounts for the purpose of convenience in maintaining the identity of and keeping the accounts of its Treasurer with each, I find that these funds are the property of the State.

Bonds purchased by and for either of these funds were bonds purchased by and for and on account of and with the funds of and became the property of the Commonwealth of Virginia, kept for convenience in the accounts to which they respectively belonged.

The remaining question is what was the legal effect upon the "public debt" of Virginia of the purchase of its bonds for each of these funds by the Commonwealth itself.

The plaintiff contends that they have remained after such purchase in the respective funds a part of the "public debt" of the State.

My attention has been called to the case of *State ex rel. Heller* v. *Young,* 18 Wash., 21, as sustaining the contention of the plaintiff. In that case the Court held that under an Act authorizing the State Treasurer "to invest all money now in his hands * * * belonging to the Tide Land Fund * * * in the general fund warrants of the state" (p. 23) that the authority conferred was "to *purchase* and not to pay" (p. 25) the general fund warrants. In the majority opinion the case turned upon the question as to whether the act contemplated "the payment and extinguishment of the warrants" or only authorized "the purchase for the benefit of the tide land fund of such warrants" (p. 24). Three of the Court held that the act contemplated a purchase and that the State could not compel the holder of a warrant to sell it to the State, the case seeming to turn largely upon the question of the power to compel the holder of a warrant to sell it to the State. While inferentially the reasoning indicates the continued existence of the warrant as a part of the debt of the State, its character in that respect is not discussed in the opinion. Two of the Court dissent and Chief Justice Scott in his dissenting opinion says:

> "It is immaterial whether the transaction contemplated an investment, a payment or a purchase. By it the State would become the holder of its own paper to a considerable amount. The original holder would be paid for it would undoubtedly be a payment to him. It might still be an investment upon the part of the State for the benefit of a particular fund. This could make no difference with the prior holder. The warrants would be *in effect discharged,* for they could not be reissued without express legislative

> authority reviving them and directing it. The State might preserve them as *evidence of the amounts* due a particular fund, which it might at some time desire to replace. * * * The word 'invest' was probably used through a desire to preserve the particular fund as a distinctive one, but these questions are not in this case and do not concern the relator in any way" (p. 32).

thus indicating clearly that the legal effect of the transaction as to whether it did or did not affect the character of the warrant as a continuing indebtedness was not involved in the case, and also clearly indicating that in the opinion of the Chief Justice the purchase of a warrant under such circumstances extinguished it as an indebtedness of the State.

The case of *State ex rel. Stull Bros.* vs. *Bartley*, 41 Nebr., 277, is cited by the majority in *State* v. *Young*. In that case the Court held that the Constitution had created a trust fund known as the Permanent School Fund, and that an Act providing for the payment of a warrant drawn on the general fund by the Treasurer and also that the Treasurer "shall hold said warrant as an investment of said permanent school fund" was void, as "said Act provides in substance for a transfer to the general fund of the permanent school fund" (p. 283). In the opinion the Court said:

> "We shall not argue to prove that an Act which provides for the defraying of current expenses of the State, and the enforced payment of outstanding general fund warrants from the permanent school fund is a transfer of that fund. The fact that such a transaction is by the legislature denominated an investment is wholly immaterial" (p. 284).

In defining "investment" they said:

> "It implies the contractural relation of purchaser and seller or borrower and lender, and in that sense it is employed in the Constitution" (p. 284),

undoubtedly having in mind the relation between the State and the holder of the warrant proposed to be credited by the Act rather than the specific relation of the State itself to its own warrant thus purchased, as they immediately proceed to say:

> "It follows that the State in its relation as Trustee can no more require the holder of State warrants to part with them than it can enforce the sale by a citizen of any other species of property" (p. 284).

While the case is not put upon that ground, it seems to involve the necessary conclusion that the warrants as "State securities" ceased to exist after such payment and although denominated an "investment," by the Act they were not after such purchase a debt or liability of the State, as if they were the "permanent school fund" would still have existed untransferred but invested in the warrants.

In *In re State Warrants,* 25 Nebr., 659, the Court held that "State warrants drawing interest" were "State securities" within the meaning of the Constitutional provision, authorizing the investment of the school funds in "United States or State Securities" but did not discuss the question as to what the effect of such a purchase would be upon such warrants as a continuing indebtedness of the State.

In *State* v. *Stuefer,* 66 Nebr., 381, the opinion of the Commissioner, who was appointed by the Court, seems to treat the proceeding contemplated by the Statute being construed by the Court in *In re State Warrants* (*supra*), as a guarantee by the State of the integrity and security of the "permanent school fund," and did not discuss the question as to the effect upon a State security, as a continuing indebtedness after its purchase by the State.

These cases, while in some respects analogous, are not in point upon the contention of the plaintiff.

In *Commissioners* v. *Walker,* 7 Miss. (6. How), 143, upon the ground that "There was a legal conveyance of the Sinking Fund to persons capable of holding it for the use and benefit of the State in the extinguishment of a certain debt" (p. 187); the Court held that the Commissioners were Trustees of the Sinking Fund; and as such could maintain the suit to recover money loaned by them from the Sinking Fund "for the use of the party beneficially interested" (p. 188); and did not discuss the question involved here.

The case of *Elser* v. *City of Fort Worth,* 27 S. W., 739, is closely in point for the plaintiff. In that case the Court said:

> "The next contention of appellant is that if the City can invest these funds otherwise than in paying off and canceling the bonds themselves it cannot invest them in the purchase of its own outstanding bonds of another series because a purchase by a debtor of a debt against himself *ipso facto* works a cancellation thereof. It must be conceded that this is a correct statement of the law in its application to ordinary cases in which the

> purchase is made by the debtor in the same capacity in which he owes the debt; * * *
>
> But, be this as it may, it will hardly be contended that if the purchase be made in a different capacity than that in which the debt is owed (for instance, if A as Trustee should with a trust fund purchase a debt which he owes as an individual), the rule would apply; and we are of opinion that as to those funds set apart for special purposes both by the law and the ordinances passed by the City Council as in this case, the City must be regarded as a Trustee purchasing with the trust fund a debt which it owes as an individual and that the debt so purchased is not canceled but is kept alive for all purposes and becomes the property of the *cestui que trust*—the special fund—just as the house and lot taken from a defaulting collector was said by our Supreme Court in the case of *City of Sherman* v. *Williams*, 84 Tex., 421, 19 S. W. 606, to become the property of such a fund. We think this view receives striking illustration in numerous provisions of our constitution and laws authorizing the investment of special funds such as the university and public school funds held by the State in its own bonds and by the different counties in their own obligations. We believe it has never been contended that a purchase of this kind cancelled the bonds thus acquired" (p. 740).

The Court distinguishes 102 N. Y., 313, and 102 N. Y., 410, upon the ground that they turn upon statutes "quite dissimilar to the provisions contained in the Charter of this City." The Charter provided:

> "The City Council shall have power to invest the sinking fund * * * in bonds of the City of Fort Worth" (p. 741).

An examination of the essential and substantial features of the legislation construed in the New York cases will, I think, show their substantial identity with this provision in the Charter of the City of Fort Worth. The opinion of the Court seems to be mainly predicated upon the analogy of the collector's house and proceeds upon an apparent misconception of the legal situation. The house had physical existence and could be impressed with a trust in connection with the fund without any reference to its ownership or any contractual relations to or interests therein. There is no parallel between such a piece of physical property and the bonds in question. A bond is merely the evidence of an indebtedness and entitles the holder to recover of the maker the amount evidenced by its terms. Independent of establishing the right of such recovery the bond has no value. To assume that it is in all respects parallel to a piece of physical property for the purpose of demonstrating that it still has valid existence as an evidence of indebtedness after its purchase by the maker, is to beg the question and assume its continued existence as a debt. The bond is a promise to pay and the real question is whether the obligation which the City assumed to pay, the sum stipulated in the bond, to the payee, still remains an obligation when the City makes the purchase itself and becomes by virtue thereof the other party to the contract. On the theory of a trust relied on by the Court the debt may well have been extinguished, as a debt, and the proceeds in the hands of the City be impressed with a trust in favor of the fund in which the debt had merged.

This was a decision of an intermediate Court. It does not appear to have gone to the Supreme Court, and I do not find that it has ever been cited with approval.

There are a number of authorities which clearly sustain the contention of the defendants, some of which are directly in point.

In *Young* v. *Hughes,* 20 Miss. (12 S. & M.), 93, the State subscribed for stock in the Planter's Bank and paid for the subscription in bonds and provided that the surplus of the dividends on the stock after the payment of the interest of the bonds was to "constitute a Sinking Fund * * * for the redemption of the said bonds" (p. 96) and a State Commissioner was afterwards provided for with power to "manage, collect and receive the Sinking Fund" (p. 98) and authorized to coerce by suit or otherwise payments of all debts due that fund. The fund was held to be the property of the State.

In *Miss.* v. *Dickinson,* 20 Miss. (12 S. & M.), 579, the State Treasurer was required to set off the indebtedness of the State to the defendant against the amount the defendant owed the Sinking Fund, notwithstanding the fact that the Sinking Fund was in a sense a trust fund because "an indebtedness to the sinking fund is therefore, an indebtedness to the State of Mississippi, the latter being the sole owner of that fund" (p. 583).

In *Comr. of Baltimore Co.* vs. *Board of Managers of the Maryland Hospital for the Insane,* 62 Md. 127, the Board of Managers of the Hospital held the title by deed of "all the real estate and other property belonging to said trust" (p. 130). They were "a body politic and corporate" might "sue and be sued" (p. 131). They

had no "power to mortgage or pledge any of the property real or personal of said hospital" (p. 130). The hospital was "declared to have been built and established on its said site by the authority and direction of this State" and the hospital was "to be a public agency of this State for the administration of one of the charities thereof" (p. 131). The Court held that the hospital was the property of the State and not subject to an assessment for the construction of a public roadway and that the "corporate form was adopted by the State only more conveniently and efficiently to administer the affairs of the Institution" (p. 132).

In *New England Life Ins Co.* v. *Phillips,* 141 Mass., 535, the Court was deciding the effect of a purchase by trustees of a Sinking Fund, of railroad bonds, which the fund was created to buy, and under the provisions of the Statute they held that it was the duty of the Trustees to cancel the certificates of the road's indebtedness when purchased by them with the Sinking Fund. They said,

> "Now if it were a plain misuse of the term to say 'invested' when preservation for the purpose of collecting income is not intended, there would be some force in the argument. But the word 'invest' has no such absolute and universal meaning. It is not uncommon to hear it said that the best investment of money is in the payment of one's debts" (p. 540).
>
> "but as has already been seen the word 'invest' does not necessarily imply a permanent keeping for income (p. 543). * * * But in the view which we take of the proper construction of the Statute it might reasonably be anticipated that the Trustees though having the liberty to invest in other securities

> would give the preference to the certificates of indebtedness if these could be obtained at a fair price as compared with the other authorized securites for the purpose of reducing the debt as fast as possible" (p. 544).

While the point is not emphasized, this last remark of the Court indicates that it understood the purchase of securities under such circumstances to result in a reduction of the debt.

In *Brooke et al.* v. *Phila.* 162 Pa. St., 123, 24 L. R. A., 781, in considering the debt limit fixed by the Constitution and the relation thereto of the bonds of the city held in its Sinking Fund, the Court said:

> "When used in the purchase of the debt, there is a release of the pledge and a discharge of the obligation to the amount of the purchase.
>
> It is not important in determining the actual debt that the Commissioners have not authority immediately on purchase to cancel or destroy the city certificate; it is paid for by the money of the obligor; put into the fund for that very purpose; *as an outstanding unpaid obligation, it can as to the obligor have no real effective existence after it is purchased and paid for with the city's* money" (p. 131). * * * It "ceases to be longer a part of the actual debt of the city. That much of the debt the City is no longer bound to pay because practically it is paid. We are speaking now of the actual obligation of the city as affected by these certificates in the fund but not yet canceled" (p. 131) * * * "The City owes now just what it is bound to pay; not one cent more. If it has through the Sinking Fund purchased its own certificates, placed them uncancelled in the fund and *even pays interest on them annually it can-*

not pay them again. The payment of annual interest is only a method or device for the annual appropriation to the fund" (p. 132).

The Sinking Fund Act provided for the "extinguishment of the bonds and funded debt" and that "said bonds when purchased shall be conspicuously stamped to show that they were purchased for the Sinking Fund of said City and the *interest on said bonds* shall be collected and used in like manner with the taxes collected for said Sinking Fund" (Laws Pa., 1874, page 234, Chap. 452, sec. 11), clearly treating the bonds as an existing investment with interest accruing thereon. This case is followed on this point in *Bruce et al.* v. *Pittsburg et al.,* 166 Pa. St., 152, and in *Houston* v. *Lancaster,* 191 Pa. St., 143.

In *Kelly* v. *Minneapolis,* 63 Minn., 125, the Court said:

"This Board [Sinking Fund Commissioners] with the consent of the council may invest the fund in the bonds of the city or in certain other designated bonds. If it is *invested in the bonds of the city* they are not to be *canceled* but the *interest thereon is to be collected* and added to the fund; and when the principal of any city bonds becomes due, such of the bonds in the Sinking Fund as may be necessary are to be sold with the consent of the council and the matured bonds paid" (p. 134).

"It appears from the record in this case that all of the bonds held by the Sinking Fund are the bonds of the City, hence the amount of the bonds and the money in the fund necessarily represent an equal amount of the out-

> standing and uncanceled bonds and indebtedness of the city which has already been realized from taxation to pay the bonds, and to ascertain the further amount to be raised by taxation in order to extinguish the entire indebtedness of the city it necessarily follows that the amount of the Sinking Fund is to be deducted from the entire amount of the apparent indebtedness of the City. *The balance is its actual debt.* The debt limit of the statute has reference to an actual indebtedness for the payment of which a tax must be levied, not to an *uncanceled apparent liability*" (p. 135).

In *Stone* v. *Chicago*, 207 Ill., 492, it was held that the sum reported as due the Sinking Fund was

> "not a debt of the city but the amount in the hands of the City Treasurer belonging to the Sinking Fund should be deducted from the amount of the city's bonded indebtedness * * * *" (p. 510).

Citing with approval *Kelly* v. *Minneapolis* (*supra*). It does not appear from this case whether or not the Sinking Fund was invested in whole or in part in the City bonds.

In *Savings Bank* v. *Grace*, 102 N. Y., 313, the Court said:

> "Re-purchase of notes or other evidences of debt by the issuer from the holder is redemption, and is equivalent to and has the force of payment" (p. 319).

Under the law being construed the Commissioners of the Sinking Fund were required to

> " 'invest the moneys which shall constitute the Sinking Fund for the redemption of the

> city debt * * * in the purchase of stocks created by the corporation of the City of New York' " (p. 321).

The stock was not to be cancelled by them until the final redemption of the stock and all interest accruing thereon was to be regularly carried to the said Sinking Fund for the redemption of the debt, and provision was made for its sale. The Court said:

> "From the time of its inception then to its final redemption it is the subject of sale; at all times the basis of interest, and, in the hands of all owners save the Commissioners, a part of the apparent indebtedness of the city" (p. 323).

Commenting upon a Statute authorizing the Commissioners to cancel the stock they said:

> "Its actual cancellation deprived it of no efficacy, for by redemption it was already for all practical purposes extinguished" (p. 324).

> "But the object of every Sinking Fund is to diminish the debt whose existence warranted its foundation" (p. 325).

In holding that stock thus invested in was not a debt, they said:

> "It satisfies also the intent of the Constitutional prohibition. That is aimed at an actual, not a theoretical indebtedness—at a substantial liability which can be discharged only by the enforcement of a tax or an assessment which when levied will be a charge upon the tax payer and a burden for him to remove—not a formal obligation which may remain as evidence of a *once existing debt,*

but which can in no way be regarded as a *present debt to be enforced* and which, if not before cancelled in the discretion of the Commissioners, becomes waste paper by the mere efflux of time" (pp. 325, 326).

"It is *by force of the ordinance* that interest is to be credited, *not by reason of the contract* or the terms upon which the stock was issued. Nor could that interest or other money be applied in payment of the stock held by the commissioners. That was paid by the purchase, yet if the argument of the respondent should prevail, it must be paid again before its extinguishment" (p. 326).

In applying similar principles to a railroad bond, the Court in *Wilds* v. *St. Louis, A. & T. H. R. R. Co.,* 102 N. Y., 410, held that conceding the bonds themselves immediately upon their purchase ceased to constitute any part of the corporate debt and were practically extinguished, and "that the provision for interest payments was only a mode for measuring and determining the amount of prescribed contributions to the Sinking Fund; those contributions at least are directed to be made so long as interest accrues upon the bonds treated as valid obligations" (p. 413).

The case of *Savings Bank* v. *Grace* (*supra*) was expressly approved in the recent and thoroughly considered case of *Levy* v. *McClellan,* 196 N. Y., 178, where the Court of Appeals of New York, said:

"City stocks or bonds so held are not debts which it can be called upon to pay within the meaning of the Constitutional prohibition. * * * 'The object of every sinking fund, it was said, is to diminish the debt whose ex-

istence warrants its foundation,' and the amount 'required to pay off the city debt if it all came presently to maturity' would be a sum 'equal to its bonds or stock not including that held by the Sinking Fund' " (p. 197).

The amount of the "public debt" is to be ascertained for the purpose of determining the proportion to be paid by West Virginia. The Sinking Fund by which the bonds in that fund were purchased came from the current revenues raised by taxation in Virginia, while West Virginia was a part thereof, and to those current revenues she contributed her proportion. If the bonds thus purchased by the Fund to which she contributed are to be treated as a part of the existing debt, she will be required to contribute again her proportion in payment thereof and will therefore in effect pay that proportion twice. The bonds in the Literary Fund were purchased by assets that were the common property of the whole State in which West Virginia owned her proportion. The common assets having been used for the purchase of the bonds now in the Fund, if the bonds are still treated as a part of the public debt and in the final adjustment made a charge upon West Virginia, West Virginia will be compelled to pay her proportion of the bonds and lose entirely the benefit of her share of the assets thus used in making the investment therein.

Inasmuch as both the Sinking Fund and the Literary Fund under the provisions of the Statute regulating their conduct and management are very clearly the property of the State and only kept in separate and distinct accounts for the convenience of the State, it is difficult to see how a

purchase by the State for either of these funds of its own obligation, does not extinguish the bond as a debt of the State. The State can hardly be debtor and creditor at the same time.

I am satisfied that the great weight of reason and authority is against the contention of the plaintiff, and I therefore find that the Sinking Fund with interest and the Literary Fund with interest, within the meaning of the decree, were not a part of the "public debt" of the Commonwealth of Virginia on the first day of January, 1861, and that the amount of the public debt was the sum of Thirty-two million, nine hundred and nineteen thousand, eight hundred and sixty-three 93/100 dollars ($32,919,863.93) plus the unpaid and accrued interest thereon amounting to Nine hundred and seventy-seven thousand two hundred and nine 89/100 dollars ($977,209.89) in all $33,-897,073.82.

I state as a "special circumstance" that I consider of importance that on the first day of January, 1861, there was held by the Commonwealth of Virginia in its Sinking Fund, bonds of the Commonwealth of Virginia that had been purchased by its funds and were its property in the amount of One million, three hundred and twenty-nine thousand five hundred and fifty-seven 20/100 dollars ($1,329,557.20), and that the unpaid and accrued interest thereon up to December 31, 1860 was Thirty-nine thousand six hundred and eighty-six 72/100 dollars ($39,686.72), aggregating one million three hundred and sixty-nine thousand two hundred and forty-three and 92/100 dollars ($1,-369,243.92), and that the Commonwealth of Virginia held in its Literary Fund bonds of the Commonwealth of Virginia that had been purchased by

its funds and were its property, one million eighty-five thousand and sixty-seven 33/100 dollars ($1,085,067.33) with unpaid and accrued interest thereon up to December 31, 1860 of Thirty-one thousand seven hundred and seventy-six 2/100 dollars ($31,776.02) total One million, one hundred and sixteen thousand eight hundred and forty-three 35/100 dollars ($1,116,843.35).

I further state that the Commonwealth of Virginia was liable under a guaranty made in 1847 upon the bonds of the Chesapeake & Ohio Canal Co. for the "punctual payment of the interest and ultimate redemption of the principal sum of money appearing due" in the sum of Three hundred thousand dollars. That of this sum, bonds aggregating Thirteen thousand dollars ($13,000) were redeemed by the Commonwealth of Virginia April 11, 1903, in her settlement with the United States for Virginia bonds held by the Secretary of the Interior for the benefit of certain Indian tribes, and that the State now holds the same as a claim against the Chesapeake & Ohio Canal Company. The sum of Thirteen thousand dollars ($13,000) does not enter in any way into the aggregate of the indebtedenss as above stated (Rec., p. 289).

The schedules hereto annexed and marked Paragraph 1, Ex. 1, Paragraph 1, Ex. 2 and Paragraph 1, Ex. 3, show by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds being the evidence of said indebtedness.

SUMMARY.

Amount of the Public Debt of the Commonwealth of Virginia January 1, 1861, $33,897,073.82.

Stated as a Special Circumstance:

Amount of bonds of Commonwealth held by Sinking Fund, $1,369,243.92.

Amount of bonds of Commonwealth held by Literary Fund $1,116,843.35.

Amount of Bonds Chesapeake & Ohio Canal Co. guaranteed by Virginia in 1847 $300,000.

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PARAGRAPH II OF DECREE.

2. "THE EXTENT AND ASSESSED VALUATION OF THE TERRITORY OF VIRGINIA AND OF WEST VIRGINIA JUNE 20, 1863, AND THE POPULATION THEREOF, WITH AND WITHOUT SLAVES, SEPARATELY."

"The extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof with and without slaves, separately," is as follows (Rec., p. 347):

1. EXTENT:			
Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%
2. ASSESSED VALUATION:			
Real Estate:			
Virginia	$296,085,460.31	=	78.2188%
West Virginia	82,449,252.04	=	21.7812%
Total	$378,534,712.35	=	100%
3. POPULATION:			
With Slaves:			
Virginia	1,221,319	=	75.4855%
West Virginia	396,633	=	24.5145%
Total	1,617,952	=	100%
Without Slaves:			
Virginia	748,171	=	66.4769%
West Virginia	377,289	=	33.5231%
Total	1,125,460	=	100%

ALTERNATIVE FINDING.

At the request of defendants, I make an alternative finding that the population of the counties now forming the State of Virginia, as shown by

the census of the United States for 1860, is as follows:

Without slaves,	747,136=67.5864%
With slaves,	1,219,630=76.4027%

And for the counties now forming the State of West Virginia:

Without slaves,	358,317=32.4136%
With slaves,	376,688=23.5973%

The assessed valuation of the territory of Virginia for 1860 was: $293,105,895.55

The assessed valuation of the territory of West Virginia for 1860 was: $83,814,355.61

"Supplemental Ex. 7."

PARAGRAPH III OF DECREE.

3. "ALL EXPENDITURES MADE BY THE COMMONWEALTH OF VIRGINIA WITHIN THE TERRITORY NOW CONSTITUTING THE STATE OF WEST VIRGINIA SINCE ANY PART OF THE DEBT WAS CONTRACTED."

This paragraph is clearly based upon the Wheeling Ordinance, which so far as material, reads as follows:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during the same period" (Appendix to Rec., p. 122).

The Wheeling Ordinance is not predicated upon the *amount* of the public debt. Upon the assumption that West Virginia would be liable for "a just proportion of the public debt" in case of separation, the Ordinance prescribes an arbitrary method by which that "just proportion" shall be ascertained. It treats the question as an equation involving three factors: first "by charging to it all State expenditures within the limits thereof"; second, "and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted"; and third, "and deducting therefrom all moneys paid into the Treasury of the Commonwealth from the

counties included within the said new State during the same period."

The result of this equation was to be a "just proportion" without any reference to the amount of the debt itself. The assumed liability was the occasion of the arbitrary equation, and whether, standing alone, it would result in a "just proportion of the public debt" is so far as the ordinance is concerned entirely immaterial. The ordinance declares that the result thus "ascertained" is "a just proportion." If the ordinance is contractural in its character, it is the agreed method between the States of ascertaining "a just proportion of the public debt." In such case the States would be bound thereby as in case of any other contract.

Next in the order of events comes the Constitution of West Virginia, which upon this point provides:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State" (App., p. 125).

The Court has held that this section is to be read *in pari materia* with the ordinance. The rules of construction seem to be well settled by the following authorities:

> "The rule is familiar and well settled that in case of obscure and doubtful words or phraseology, the intention of the law makers is to be resorted to if discoverable from the context, in order to fix and control their meaning so as to reconcile it if possible with the general policy of the law" (p. 677).
>
> *Wilson* v. *Rousseau*, 4 How. U. S., 646.

"It seems all sufficiently plain, and in such case there is a well-settled rule which we must observe. The object of construction applied to a Constitution is to give effect to the intent of its framers and of the people in adopting it. This intent is to be found in the instrument itself, and when the text of a constitutional provision is not ambiguous, the Courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument. * * *.

So also where a law is expressed in plain and unambiguous terms whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction" (pp. 670, 671).

Lake Co. Com. v. *Rollins,* 130 U. S., 662.

"The general rule is perfectly well settled that where a statute is of doubtful meaning and susceptible upon its face of two constructions, the Court may look into prior and contemporaneous acts, the reasons which induce the act in question, the mischiefs intended to be remedied, the extraneous circumstances and the purpose intended to be accomplished by it, to determine its proper construction. But where the act is clear upon its face and when standing alone it is fairly susceptible of but one construction, that construction must be given to it" (p. 419).

Hamilton v. *Rathbone,* 175 U. S., 414.

"Consequently if a subsequent act on the same subject affords complete demonstration of the legislative sense of its own language, the rule which has been stated requiring that the subsequent should be incor-

porated into the foregoing act is a direction to Courts in expounding the provisions of the law" (p. 8).

Alexander v. *Mayor*, 5 Cranch., 1.

"And if it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attached to the words of a former statute they will amount to a legislative declaration of its meaning and will govern the construction of the first statute" (p. 565).

U. S. v. *Freeman*, 3 How., 556.

"In cases of *doubt or uncertainty* acts *in pari materia* passed either before or after, and whether repealed or still in force may be referred to in order to discern the intent of the legislature in the use of particular terms, or in the enactment of particular provisions" (p. 235).

Vane v. *Newcomb*, 132 U. S., 220.

The only question that can arise here is as to the application of these rules to the Ordinance and the Constitutional provision read together. I understand a proper application of these rules, at bar, to be that where there is any doubtful uncertain or ambiguous word, phrase or sentence, which is susceptible of two constructions, one of which would operate equitably and one inequitably, that the "equitable" purpose declared by the Constitutional provision requires a construction that would produce the equitable result. Where, on the other hand, the language is clear and unambiguous there is no room for construction, and the clear and obvious meaning is to be adopted. If it is to be held that by reason of the Constitu-

tional provision equitable results should be reached in every instance, notwithstanding the plain provisions of the Ordinance may operate inequitably, the Constitutional provision would in such case in effect eliminate each or every factor in the equation stated in the Ordinance. This would substitute the Constitutional provision for, rather than read it with, the Ordinance. They are to stand and to be read together, the Constitutional provision being invoked only when it is needed for the purpose of interpreting and making certain what is uncertain and ambiguous.

Bearing upon the equitable construction, it is to be observed that both the Ordinance and the Constitutional provision proceed upon the assumption that by the act of separation, West Virginia became liable for a portion of the "public debt of Virginia," which if liquidated before the separation, would have been borne by the citizens of the whole State upon some equal basis. So far as the liability of the State can be predicated upon the citizens constituting the State as distinguished from the State itself, it can be predicated upon either population, territory or property or upon a combination of two or more or all of them. In either case the same proportional liability would rest upon population, territory or property wherever it might be situated. The unit of liability ascertained, each unit would be liable for its *pro rata* share of the whole debt wherever the unit might be. It would be so liable no matter how the debt might have been incurred or in what section its proceeds might have been expended, or what particular benefit or advantage any particular unit or set of units might have received therefrom. The relation of the

units to each other would be joint and indivisible, the debt a common debt and its proceeds expended from a common fund. Each unit was bound by the action of the lawful majority in incurring the debt and expending the proceeds. Any construction that tends to relieve any of these units from their *pro rata* share of such common liability for the whole public debt would to that extent be inequitable as it must necessarily result in increasing the liability of the remaining units.

The amount claimed under this paragraph by Virginia is $5,639,302.66

(Rec., p. 371, c. 1, p. 1.)

The amount conceded by West West Virginia is..... $1,251,288.92

(Rec., p. 371, c. 1, p. 1.)

The items in controversy are as follows:

Item 2 (Rec., p. 373, c. 1, p. 2)—Covington & Ohio Railroad, $1,146,460.42.

By an Act passed February 15, 1853, the Board of Public Works were made "a body politic under the name of the Covington and Ohio Railroad Company" (App., p. 33). This Company had no capital stock or stockholders or officers except as the Board of Public Works acted as its officers.

By Section 3 it was provided that

> "The Board of Public Works shall commence and continue the construction of said road," etc.

By Section 4, the same Board was

> "authorized to borrow on the credit of the Commonwealth * * * the money necessary to construct and equip said road."

March 13, 1856, the same Board were

> "authorized and directed to borrow from time to time * * * the sum of Five hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio Railroad" (App., p. 34).

A specific provision was made for the manner in which the money was to be expended. March 20, 1858, they were again authorized to borrow for the same purpose under the same restrictions, Eight hundred thousand dollars. (App., p. 34), and on February 29, 1860, the sum of Two and one-half millions. Under these various Acts, it is conceded that prior to January 1, 1861, the sum above mentioned had been expended within the limits of West Virginia.

I find that the sum thus expended was an expenditure by the Commonwealth of Virginia within the territory now constituting the State of West Virginia prior to January 1, 1861.

Alternative Finding.

At the request of the defendant I find in the alternative that it appears that on February 26, 1866, the Commonwealth of Virginia passed an Act incorporating the "Covington and Ohio Railroad Company" (App., p. 35) and on March 1, 1866, West Virginia (App., p. 37) passed an Act incorporating the same Company. By these Acts

upon the performance of the conditions therein specified, the Company was to

> "have all the rights, interests and privileges of whatsoever kind in and to the Covington and Ohio Railroad and appurtenances thereto belonging, now the property"

of either state (Sec. 2, of each Act).

On February 26, 1867 (App., p. 40) additional legislation to enable the completion of the road and authorizing its consolidation with four other railroads was passed by West Virginia. An Act for the same purpose and with substantially the same provisions, with some immaterial variations, was passed by Virginia March 1, 1867 (App., p. 43). The name of the road was changed by both Acts to the Chesapeake & Ohio Railroad Company. By section 14, of the latter Act, the Railroad was given the

> "right * * * to purchase the stock held by the State in said company * * * to pay any debt which it may owe the State * * * by surrendering * * * bonds for an amount equal to the debt proposed to be paid, and may also purchase the right of the State in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road, etc." (App., p. 45).

Nothing appears in the Record to show whether any such purchase of stock of the State by the Road was made, nor does anything appear to show whether any debt of the Road to the State was paid. It does appear and I find as a fact that the State of Virginia received in 1870 for the

Blue Ridge Railroad from said Chesapeake and Ohio R. R. Co., $625,348.08 (Rec., p. 487).

I find as a fact that the State of Virginia was relieved by the Chesapeake & Ohio Railroad Company of a guarantee of the bonds of the Virginia Central Railroad, amounting to One hundred thousand dollars (Rec., p. 487).

Item 3.—Winchester & Potomac Railroad, $170,532.00.

This item results from an item of $270,000 which consists of $120,000 paid for stock subscribed, and paid for by the State, and $150,000 loaned by the State to the Railroad Company (Rec., p. 489).

It raises the question as to whether the subscribing and paying for stock in an internal improvement company, whose improvements were located within the limits of West Virginia was "an expenditure made by the Commonwealth of Virginia within the territory now constituting the state of West Virginia," etc.

It is contended upon the part of the plaintiff that the various improvement companies were merely the method or machinery adopted by the State for the purpose of creating internal improvements, and that as declared by its Board of Public Works,

> "It was not the original purpose of the legislature in creating the fund for internal improvement that the aid to be extended to joint stock companies should be afforded upon the principle of mere money making" (Rep. Bd. of Public Works, Vol. 6, p. 10).

and

> "It must be remembered that these improvements were not fostered by the legislature through contributions in subscriptions and loans merely as investments of so much money in profitable stocks but that they were actuated by a higher consideration, that of promoting the prosperity of the State at large by contracting to build up the local prosperity of its different sections" (Same Vol. 12, p. 8).

and that this being the dominating and controlling purpose these were, within a proper construction of the decree, "expenditures made by the Commonwealth of Virginia," &c., &c.

I have no doubt that the purpose thus declared by the Board of Public Works was the controlling purpose that led the State to engage in these public improvements through the method adopted of organizing joint stock companies and the State becoming a stockholder therein. It is at the same time clear that the element of investment and an expected return therefrom and a belief in the value of the investment was an important element from the beginning. In giving the reasons for adopting this method, the same Board said:

> "Private wealth will of itself take the direction which personal interest prompts."
> * * *
> "But it can never be to its [the State] interest, for many reasons, to become the sole proprietor of all the public works within its territory.
> Experience testifies that they will be more economically improved and better repaired if the management be left to the individuals who subscribe to their stock, with a view to

> private gain, than if confined to public officers or agents. The Commonwealth should subscribe to so much of their stock and upon such terms as will suffice to elicit individual wealth for public improvement" * * * (Rep. Bd. Pub. Works Vol. I, p. 48).

For the purpose of inducing subscriptions they suggest,

> "By yielding to the individual subscribers the profit of the State on its shares of the stock of any company where required to secure such individuals against temporary loss, a much smaller subscription of the public money will suffice to draw forth private enterprise."

On page 81, they say, after having discussed the failure of the stock of some of the companies to yield an immediate income, that the foundation had been laid that would

> "assure to the Commonwealth a speedy return for such sums as the General Assembly may authorize the Board of Public Works to subscribe out of the funds for internal improvement."

and referred to the method adopted to

> "arouse the enterprise and patriotism of their fellow citizens in general to embark their private fortunes in the career of internal improvement."

A report of this Board for 1818 shows that returns were expected from the James River project of Thirty-five thousand dollars per year, and the report for 1819 shows that the stock of the Dismal

Swamp Company and Roanoke Navigation Company were above par, and the Swift Run Gap Turnpike Company had paid from five to ten per cent dividends for several years. In the report for 1831, referring to the completion of the James River Improvement they say that

> "A revenue not only sufficient to pay the interest upon the amount of the expenditure but that a surplus greatly beyond it will be realized."

It was the expectation of these profits that justified the Act of 1820 (App., p. 50) under which the State practically took over the property of the James River Company and guaranteed its stockholders 12 per cent. dividend for twelve years and 15 per cent. "forever thereafter."

Substantially all of the Acts, both general and special in their character, authorizing the Board of Public Works to subscribe for stock of the various improvement companies, comtemplated the receipt of dividends on the stock of the State and made specific provision for its disposal and use, recognizing the value of the stock.

Under the Act of 1817, Sec. 32 (App., p. 16) a general provision was made giving the state the prior right to purchase the stock of other stockholders and prohibiting its offer to others until it was offered to the State. In order to induce the investment of private capital in the stock of the companies it suspended its right to dividends upon its own stock until the stock of other subscribers had "netted to them six per cent. per annum" (App., p. 6). Under a Statute passed in 1816 private subscription to 3/5 of the stock was required before the subscriptions were made on

behalf of the Commonwealth (App., p. 5). The privilege as to suspending dividends for the benefit of the other stockholders was repealed in 1828 (App., p. 10). While the proportion of stock taken by the Commonwealth was at first 2/5 of the capital, this proportion was changed in 1848, so that in most, if not all of the instances thereafter, the State was authorized to subscribe 3/5 of the capital. (See Acts of 1848, Chap. 196, sec. 3, p. 220.)

The Act of April 9, 1838 (Acts of Va., 1838, Chap. 12, Sec. 3, p. 24), provided for the payment of the interest and final redemption of the principal sum borrowed for the payment of stock subscriptions. It also provided that

> "the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other net income which may accrue therefrom to the Commonwealth or to the fund for internal improvement, shall be and the same are hereby appropriated and pledged," &c.,

for the payment of such loans, thus holding out the stock of the Commonwealth with its expected dividends as a security of value as an inducement to investors.

The Constitution of Virginia of 1851 recognized these stocks as the property of the Commonwealth by the following provisions:

> "The General Assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvement and other companies, but the proceeds of such sale, if made before the payment of the public

debt, shall constitute a part of the Sinking Fund and be applied in like manner."

(Art. IV, Sec. 30, Code of Va., 1860, page 47.)

The Board of Public Works was authorized

"when in their opinion the public interest will be promoted thereby, to transfer and convey the State's interest in any turnpike or plank road or any part thereof in the County or Counties in which said road may lie"

(Code Va., 1860, Ch. 61, Sec. 52, p. 365) (App., p. 20);

thus clearly treating the stock as the property of the State. That its interest as a stockholder was the interest referred to appears from the next section, which provides for a transfer of the

"interests of the stockholders other than the State."

Section 54 prohibits the transfer of any road that can in their opinion

"be made productive or self-sustaining,"

and the Act shall not take effect

"until the stockholders other than the State shall have transferred their interest to said County,"

evidently contemplating that the State was the owner of certain stocks at least that were its property and were of value as assets.

By an Act passed by the Pierpont or Restored Government, Feb. 13, 1863, a formal transfer of

> "all stocks of any other company or corporation the principal office or place of business whereof is located within the said boundaries standing in the name of this State or of the said President or Directors or of the said Board of Public Works or of any person or persons for the use of this State"

purports to have been made to West Virginia (App. 128).

The plaintiff in paragraph 8 of its bill of complaint (Rec., p. 8) referred to and recited this portion of the Act of 1863 and alleged:

> "that the property which was by the operation of this Act appropriated and transferred to the State of West Virginia aggregates"

several millions of dollars, and

> "that of the bank stocks alone which were transferred under the operation of this Act,"

defendant received

> "from the sale thereof about Six hundred thousand dollars."

The record does not disclose the existence of any stocks other than those in controversy, upon which the Constitutional provision or the Act of 1863 or the allegations of the plaintiff's bill can apparently be predicated.

That the State early appreciated that its legal relation to these various companies was that of a stockholder only, seems clear.

The Act authorizing the subscription to the stock of the Shepherdstown and Smithfield Turnpike Company by the Board of Public Works, passed February 20, 1826 (Acts of Va. 1825-26, p. 66), contains this proviso:

> "Provided that the money hereby authorized to be advanced to said company by taking part of the stock thereof shall be applied exclusively to the completion of said road should any part of it be unfinished when the aforesaid sums of money shall respectively become payable."

A similar act relating to the Petersburg Railroad Company, passed March 22, 1831 (Acts of Va. 1830-31, p. 205), contains a similar proviso:

> "Provided that no part of the stock herein authorized to be subscribed shall be payable until said three-fifth shall have been fully paid and expended by the said company in the construction of the road aforesaid unless at the option of the said Board."

The General Act of February 11, 1832, contains this provision:

> "When the Board of Public Works having made any subscription to the stock of any company shall have good cause to believe * * * that the funds of the company are misapplied or will probably be misapplied, it shall be the duty of the said Board to withhold payment of their subscriptions until proper legal measures can be taken to secure * * * the faithful application of the funds of the company" (App., Sec. 4, p. 18).

The conditions thus imposed by the Commonwealth to enable it to thus indirectly control or dispose of the funds of the corporation is clearly inconsistent with the idea that it had any right to control the assets other than that of an ordinary stockholder, as, if they were within its control, such legislation would have been unnecessary.

The act to amend the Charter of the James River and Kanawha Company, passed March, 1860, clearly recognized the distinction between the rights of the State as a stockholder and a creditor of the Company (App., p. 108).

Code of Virginia, 1860, Chapter 67, Sec. 28, p. 391, authorized the Board of Public Works to purchase

> "any work of any internal improvement in which the State is a stockholder, or otherwise interested,"

at a sale

> "by virtue of mortgage, judgment or other lien, * * * on the part and for the use of the Commonwealth" (p. 391).

That the state fully recognized these stocks as investments of value and that its rights were those of a stockholder only, seems clear.

The case of U. S. *v.* Stanford, 161 U. S., 412, is relied upon as sustaining the contention of the plaintiff. The only question involved in that case was whether a stockholder of the Central Pacific Railroad Company, the California Company, was personally liable as such stockholder for the bonds of the United States "loaned to railroad companies for the purposes indicated in the Act of

1862" (p. 428). The Statutes of California made such stockholders liable for all of the road's "debts and liabilities" (p. 414) the Union Pacific Railroad chartered by Congress and enjoying on the same terms with the Central Pacific Railroad Company the benefit of the bonds, not being so liable. It is true that in the opinion, the Court said:

> "These ends were to be attained through the agency of a corporation created by Congress and of certain corporations organized under State laws which Congress selected as instruments to be employed in accomplishing the public objects specified in its legislation" (p. 427).

I do not understand that by the use of this language the Court intended to be understood as holding that the relation of principal and agent existed between the United States and the corporations in question, or that their property or assets and the right to control the same was in any way changed or affected by reason of their having been selected as such "agency" or "instrument," or that by reason of their having been so selected the United States acquired any control of or interest in the assets of such companies. They were agencies and instrumentalities in the same sense that all public service corporations are instrumentalities and agencies of the State, and only in that sense did Congress extend its aid to these particular corporations to accomplish the objects desired. The opinion in effect so states:

> "The Supreme end sought to be attained was by means of private capital and Governmental aid to secure the construction of the

> whole line, for the benefit primarily of the United States and for the use of all the people" (p. 430).

The companies "private capital" was building the road and the Government was simply rendering aid to an "agency" selected by it for that purpose and in that sense only was the road in question the agent of, or instrumentality of, the Government. That the assets of these companies were their own and not the property of the United States was expressly held in the *Sinking Fund cases*, 99 U. S., 700, where the Court said:

> "It is a matter of no consequence that the Secretary of the Treasury is made the Sinking Fund agent and the Treasury of the United States the depository or that the investment is to be made in the puble funds of the United States. This does not make the deposit a payment of the debt due the United States (p. 725),"

because as the Court said:

> "While the money is retained it is only that it may be put into the fund which, although kept in the Treasury, is owned by the Company" (p. 726),

and

> "Under the circumstances the retaining of the money in the Treasury as a part of the Sinking Fund is in law a payment to the company" (p. 726).

There is no intimation in the opinion that there was any financial relation existing between the United States and the companies other than that

of creditor and debtor or that the money that the companies expended in constructing the road was in any sense, either directly or indirectly, money of the United States or an expenditure by the United States.

I find nothing in the case that justifies the inference that these corporations were agents to apply money put into their hands by the Government to construct the road and were therefore expending the money of the Government therefor.

In *Liverpool Ins. Co.* v. *Massachusetts,* 10 Wall., 566, the Court stated the conditions under which joint stock associations will be held to be a corporation within the scope of a Statute which "permits it to exercise its corporate function in that State on the condition of payment of a specific tax," and for the purpose of suits and in some other particulars, such associations have been recognized by the Courts as corporations.

See also

Fargo v. *L. N. & Chic. R. R.,* 6 F. R., 787.
Edgeworth v. *Wood,* 58 N. J. L., 463.

The following well considered authorities seem to establish clearly the distinction between the State as a stockholder and the corporation as a legal entity.

In *Bank of U. S.* v. *Planters Bank of Ga.,* 9 Wheat., 904 the State of Georgia was a stockholder in the Planters Bank. The point was raised that the State was a "party defendant." In overrul-

ing this contention Mr. Chief Justice Marshall said:

> "A suit against the Planters Bank of Georgia is no more a suit against the State of Georgia than against any other individual corporator (p. 906). * * *
>
> The state does not by becoming a corporator identify itself with the corporation. The Planters Bank of Georgia is not the State of Georgia although the State holds an interest in it.
>
> It is, we think, a sound principle that when a government becomes a partner in any trading company, it devests itself so far as concerns the transactions of that company of its sovereign character and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself and takes the character which belongs to its associates, and to the business which is to be transacted (p. 907). * * * As a member of a corporation a Government never exercises its sovereignty. It acts merely as a corporator and exercises no other power in the management of the affairs of the corporation than are expressly given by the incorporating act * * * and exercises no power or privilege which is not derived from the Charter" (p. 908).

This case has been frequently approved on this point. (See Rose's Notes.)

In *Bank of Kentucky* v. *Wister,* 2 Peters, 318, where the State owned the whole of the stock of the Bank, a case much stronger than the case presented at bar, the Court said:

> "it was insisted that the suit was virtually against a sovereign state," (p. 322).

In affirming 9 Wheat., 904, and holding against the contention, the Court said:

> "But this Court is of the opinion that the question is no longer open here" (p. 322).

In *Briscoe* v. *Bank of Kentucky,* 11 Pet., 257, the question was whether the notes of the Bank were bills of credit issued by the State. The State was the sole owner of the stock of the Bank and all private interest was expressly excluded. Its officers were chosen by the Legislature. It was contended that the Bank was the "mere agent of the State." In holding the contrary, the Court said, answering the following question in the negative:

> "The State of Kentucky is the exclusive stockholder in the Bank of the Commonwealth, but does this fact change the character of the corporation? Does it make the Bank identical with the State? And are the operations of the Bank the operations of the State? Is the Bank the mere instrument of the sovereignty to effectuate its designs and is the State responsible for its acts?" (p. 323).

and again:

> "If the Bank of the Commonwealth is not the State nor the agent of the State, if it possesses no more power than is given to it in the act of incorporation and precisely the same as if the stock were owned by private individuals, how can it be contended that the notes of the Bank can be called bills of credit in contradistinction from the notes of other banks?" (p. 326).

See Rose's Notes for approving citations and also *Curran* v. *Arkansas,* 15 How., 304.

This question seems to have been clearly settled by the Courts of Virginia.

The case of *James River & Kanawha Co.* v. *Early*, 13 Gratt., 541, was an action to recover for the negligence of the corporation. In discussing the question of the liability of the Company, the Court said:

> "It is not a *public corporation* representing the *public* and *administering public funds* for the benefit of *the public*, but it is a joint stock company which has undertaken the construction of a work, useful to the public certainly, but *intended for the private emolument* of the stockholders in dividends of the profits" (p. 552).

> "That the State owned a large interest in the stock of the company will not vary the case * * * a mere interest taken by the Commonwealth in the stock would not be sufficient to bring an action against the company for neglect of its corporate duty within the influence of the decision in the case of *Sayre* v. *The Northwestern Turnpike Road*, 10 Leigh, 454 * * *" (p. 553).

This case is clearly in line with the decisions of the United States Supreme Court upon the relation of the State to a corporation. These corporations were not "*administering public funds* for the benefit of the public."

It seems to me clear that the relation of principal and agent did not exist between the State and these corporations in which it was a stockholder. While in a popular general sense they may be termed the machinery, instrumentality or agency through which the State operated in making the particular disbursement, they were such agency, machinery and instrumentality in

the same sense that they were the agency, machinery or instrumentality of the other stockholders, or perhaps, in the added sense in which every public service corporation is the agency, machinery or instrumentality of the State. The State held two-fifths or three-fifths of the stock, but had no more control over the funds of the company, or any more title to the assets of the company, than any other stockholder holding a like amount of the stock. Like other stockholders it was an investor with the same rights and privileges. It may be said that as a matter of public policy, in a general way, the State was in this manner, indirectly, at least, making an expenditure, and no investment can be made without an expenditure. This case must be determined, however, by well-recognized legal rules. The language of the decree is plain and unambiguous. To hold these subscriptions thus made for investment to be expenditures by the State "within the territory" it would be necessary to read into the decree the words "either directly or indirectly" which I do not feel at liberty to do.

I find therefore that the sums in question in case of the joint stock companies in which the State was a stockholder were expenditures made by the respective companies from their own funds and not by the State. I therefore disallow the sum of $120,000, subscribed and paid for stock in the Winchester & Potomac Railroad Company by virtue of the Acts of 1832 and 1833 (App., pp. 28 and 29).

By an Act passed February 13, 1838 (App., p. 29), the Board of Public Works were

> "directed to loan on behalf of the Commonwealth * * * to the Winchester & Poto-

> mac Railroad Company * * * upon the condition that the salaries of the officers and servants of the said company shall not be directly or indirectly increased during the existence of this debt",

and upon

> " a mortgage upon the whole property, real and personal, and upon the net income of all their tolls and receipts"

the sum of $150,000. Specific provision as to security was made. Acceptance of the loan gave the Legislature " a right to tax the stock, property and profits" of said Company, and the Company was required to pay off all prior liens so as to make the mortgage of the State a first lien (App., p. 30).

This is clearly a loan with specific and careful provision made to secure its repayment, and was so intended by each party thereto. I therefore disallow the item.

ALTERNATIVE FINDING.

At the request of the plaintiff under this item, I make the alternative finding:

First.—That $120,000 was subscribed and paid by the Commonwealth for stock in the Winchester and Potomac Railroad under the Act of 1832, and

Second.—That the sum of One hundred and fifty thousand dollars, with specific provision to secure its repayment with interest thereon was loaned by the Commonwealth to said Railroad

under the Act of 1838, and that the portion of the road in West Virginia was 63.16%.

As a special circumstance that I consider of importance, I also find that an Act was passed February 24, 1846 (App., p. 30), providing for an annuity of $5,000 in lieu of interest upon the debt due by said Company to the Commonwealth, and all dividends upon the stock of the Commonwealth in said company. So long as the annuity was paid, "the payment of the principal of said debt shall be so long postponed" (App., Sec. 2, p. 31). If default were made in payment "the whole of said debt and interest due" are to be collected (Sec. 3) and the lien for the whole debt and interest was fully retained (Sec. 4).

February 22, 1866, the Company was authorized "to pay into the Treasury of the Commonwealth" $83,333.33 (Sec. 1, App., p. 31). Payment could be made in State bonds at their par value, and when made the "claim of the State against said Company shall be lifted and discharged." Under this Act there was paid into the Treasury of the State in bonds and interest in 1866, $118,518.12 (Rec., p. 462).

Item 6.—Berryville & Charlestown Turnpike Company, $11,932.52.

This sum was paid upon a stock subscription and is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth subscribed and paid for stock in said road under Acts of 1849

and 1850 $20,455.74, and that 58 1/3% of the road was in West Virginia.

Items 10, 11, 12, 13 and 14 all relate to the Kanawha Turnpike and the Kanawha River Improvements.

An Act was passed February 17, 1820, relating to the James River Company (App., p. 50). In its preamble it declared that that company was willing to consent to such modification of its charter as would enable the company

> "as an *agent* acting and holding *in trust* for the benefit of this Commonwealth to undertake and carry the said improvements into effect in such manner as the General Assembly shall from time to time direct and require, and under the direction and superintendence of such agent or agents as may from time to time be appointed for that purpose by appropriating to these objects such sums of money as they may borrow," &c.,

upon the condition that the company would consent to applying its surplus tolls and income

> "to the payment of the interest on the money which they may so borrow,"

except so much as might be necessary to pay a dividend on the present stock of the company of twelve per cent. for twelve years and fifteen per cent. forever thereafter. It was stipulated

> "that the General Assembly shall provide for making good any deficiency in the payment of the interest on any money so borrowed which may remain to be provided for

> after applying the surplus tolls and other income of the said company with the exceptions aforesaid to the payment of interest as aforesaid" (App., p. 51).

It was provided that upon its acceptance by the Company, the Act should be

> "considered a compact between this Commonwealth and the said company"

and while subject to change and modification, no such change and modification should be made

> "as will take from the James River Company their right to the dividends or any part of the dividends upon their stock allowed to them by this Act" (App., p. 51).

The improvements contemplated were to be "prescribed by the Legislature" and should from time to time be made under the superintendence of the Commissioner or Commissioners, agent or agents as the General Assembly should from time to time appoint. It was provided that the works of the Company

> "shall forever thereafter be esteemed and taken as public highways for the transportation of all goods, commodities and produce whatsoever * * * and the road, canals, locks dams and other works when perfected with all tolls, and other profits and emoluments arising therefrom shall be and the same are hereby vested in the said company as *agents in trust* for this Commonwealth" (App., p. 53);

and in Section 10 the company was referred to as, after giving their assent,

"holding as an *agent in trust* for the benefit of the Commonwealth."

Repairs were to be

"contracted for and made by the Company from time to time under the control, direction and superintendence of the Commissioners on the part of the Commonwealth" (App. p. 56).

Commissioners were provided for, and no contracts were to be made by the Company for the improvement of the Kanawha River and Road until the same should be submitted to and approved in writing by the Commissioners, named to superintend the works on such River and Road (do. p. 56). All contracts for making any improvements on the James and Jackson River were to be

"submitted to and approved in writing by the Commissioners" (do. p. 56).

The Treasurer of the State was made *ex officio* the Treasurer of the Company. Money was to be borrowed "as the General Assembly shall hereafter direct" (do. p. 57). Certificates issued for money borrowed were

"to be redeemed only at the pleasure of the General Assembly."

The surplus of such tolls and other incomes after the

"payment of the expenses, dividends and interest as aforesaid shall from time to time be paid into the Treasury of this Comonwealth to the credit of the fund for Internal Im-

> provement, to be disposed of as may from time to time be directed by law" (do. p. 58).

By an Act passed February 24, 1823 (App., p. 64), a much more pronounced change in the character of the legal relation was made. All of the powers and duties of the existing President and Directors were "superseded and annulled." Certain officials of the State were made *ex officio* the President and Directors of the Company and they succeeded to and possessed

> "all the rights, powers, duties and privileges of the existing President and Directors" (do., p. 64),

except so far as may be otherwise directed by the provisions of the act. All of the moneys were to be

> "kept in the public treasury separate from other public moneys" (do., p. 65).

The funds raised and used were to be paid into and disbursed from the Public Treasury (do., pp. 65, 66 and 67). Commissioners were created with powers to carry into effect the provisions of the Act (do., pp. 67 and 68). They were to appoint such "engineers, managers or agents" as they might think necessary and remove them at their pleasure. Provision was made for carrying out the contracts made by the Company "as if the powers of the said company had continued" (do., p. 69). Its superintendents and officers were to continue until

> "superseded by appointments under this Act or their offices annulled by the provisions thereof" (do., p. 69).

These and numerous provisions show that the State by virtue of these two acts had in effect acquired title to all the property of the company. The Acts were so construed in the case of *Higginbotham Exr.* v. *The Commonwealth,* 25 Grattan, 627, where the Court said, in describing the relation of the State to the Company:

> "Here then we have a solemn 'compact' between the State and the Company. * * * Such was the solemn obligation assumed by the State as the price of the stockholders' property" (p. 628),

and referring to the Act of March 16, 1832:

> "On that day, however, a new company with greatly extended powers was chartered called the James River and Kanawha Company, to which all the interest of the State in the old James River Company was transferred" (p. 628).

The record does not disclose when, and what for, or how, these items were paid. In order to supply the deficiency of proof in this regard, I have had recourse to the notes of the accountants and report as a part of the case so much of their notes, agreed to by them, as relates to these items as "Supplemental Exhibit I."

I find by these notes that of Item 10, $152,130.54, the sum of $149,491.90 was expended by the State "within the Territory" after March 19, 1823, and before March 16, 1832, on the Kanawha Turnpike Road. There is nothing in the record to show when the actual transfer by the State was made under the provisions of the Act of March 16, 1832. I find that the sum of $2,638.64 was expended by

the Commonwealth after March 16, 1832, but was an actual expenditure, not an investment or a loan, and I therefore allow the whole sum of $152,130.54 as an expenditure.

I find that Item 11, $2,593.92 was expended by the Commonwealth "within the territory" upon the Kanawha after December 31, 1834, and that it was an actual expenditure by the State and not an investment or a loan, and I therefore allow it as an expenditure.

I find that Item 12, $7,189.65 was also expended by the Commonwealth "within the territory" upon the Kanawha Turnpike after December 31, 1834, and was an expenditure and not an investment or a loan and I therefore allow the item.

I find that under Item 13, the Commonwealth expended after March 13, 1823, and prior to March 16, 1832, "within the territory" upon the Kanawha Turnpike, $3,202.53 and that the State expended "within the Territory" upon the same turnpike, the sum of $77,752.75, after March 16, 1832 ($49,935 of which was on account of contracts made and services rendered prior to March 16, 1832); that the whole sum was an expenditure by the State and not an investment or a loan and I therefore allow the whole sum.

As to Item 14, I find that the amount of $59,572.36 was all expended by the Commonwealth within the territory after March 19, 1823, and prior to March 19, 1832, and I therefore allow the same.

Alternative Finding.

As an alternative finding at the request of the defendant I find that the State was to transfer

> "her whole interest in the works and property of the present James River Company to the James River and Kanawha Company in payment for its subscription for 10,000 shares of stock" (App. p. 87).

There is nothing in the record to show whether this transfer was actually made. It does not appear whether there was a general meeting of the stockholders upon which the transfer was to be made.

Item 15—Kanawha Board bonds, $60,000.

I find that this was a loan of $60,000 in bonds to the James River and Kanawha Company under the provisions of the Act of March 23, 1860, sec. 9 (App. p. 110) which authorized a loan for $300,000 to the James River and Kanawha Company upon a "deed of trust or mortgage upon the works, property and net revenue to the Commonwealth for the payment of the principal and interest of said $300,000." It was also provided that such lien

> "shall take precedence over any lien created by said company to secure their bonds authorized to be issued by this Act."

Under this Act, $60,000 was loaned (Rec., p. 490).

There is nothing in the record to show whether it has or not been repaid, although counsel for West Virginia stated at the argument that he did not think it had been repaid.

This was a clear loan with careful provisions made to secure and a reasonable expectation of

its repayment, and I therefore disallow it as an expenditure.

ATERNATIVE FINDING.

I find, as an alternative finding at the request of the plaintiff that the sum of $60,000 was loaned to the James River and Kanawha Company by virtue of the provisions of the Act of March 23, 1860, sec. 9 (App., p. 110), and that the loan has not been paid.

Item 17, $7,882.92 was withdrawn by the plaintiff upon the ground that the portion of the road charged for was wholly in the State of Maryland.

Item 25,—Brandonville, Kingwood and Evansville Road—$10,595.73

Item 28, Clarksburg & Buchanan Turnpike, $19,259.36.

Item 35, Kingwood and West Union Turnpike, $18,140.61,

are all for macadamizing (Rec., p. 451).

In the case of the Brandonville, Kingwood and Evansville Road, the State although a small stockholder therein, paid out the sum independent of its interest as a stockholder (Rec., p. 480).

By an Act passed March 18, 1853, the Board of Public Works were directed

> "to have such parts of the Clarksburg and Buchannon Turnpike Road macadamized or planked as they may think stand in need of such improvement" (App., p. 140).

By an Act passed February 28, 1853, $28,000 was appropriated for the purpose of macadamizing the Kingwood and West Union Turnpike and the Board of Public Works was authorized

> "to pay the said appropriation as is provided by law" (App. p. 143).

These were not investments or loans. They were sums directly expended by the State upon the public improvements owned by these companies to be sure, and while the expenditure no doubt increased the value of the properties the expenditure was in my judgment made by the State, for the sole purpose of promoting the public convenience, and were not intended, so far as anything disclosed in the record shows, as gratuities to the companies involved. I therefore think they come fairly within the scope of an expenditure and allow them as such.

Item 53—Harpers Ferry Raid—$189,718.59—

I think that "an expenditure within the territory" in question means expenditures that are local in their character; that are localized by the subjects upon, or for, which they are expended, and the benefits which enure from such expenditures are benefits that the territory in question received the benefit of, it remaining therein, as distinguished from the rest of the State outside of that territory, the result of which in case of physical property remained within the territory after the expenditure had been made, not expenditures the benefit of which were common to all of the people of the State irrespective of the localities in which

they resided. These expenses do not appear to me to come within the scope of such an expenditure. The only benefit the "territory" derived therefrom was the same benefit that it derived in common with the rest of the State. It was not an expenditure made for the benefit of that particular "territory." The money was appropriated and paid "for the Defense of the Commonwealth" (App., p. 149) not for any particular part of the Commonwealth. I therefore disallow this item as a direct expenditure.

ALTERNATIVE FINDING.

At the request of the plaintiff I find that the Commonwealth paid on account of the Harpers Ferry Raid that occurred "within the territory" of West Virginia, the sum of $189,718.59.

Item 54—School Commissioners—$830,865.37.

This amount is claimed by the plaintiff as an expenditure "within the territory" out of a total of expenditure for like purpose in the whole Commonwealth of $3,056,239.84 (Rec., p. 538-H).

The Constitution of Virginia directed that

> "One equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools" (Con. Va. Art. VI. Sec. 24—Code Va. 1860, p. 46).

February 21, 1818, an annual appropriation of $45,000 for the education of poor children was made.

This was increased to $70,000; and in 1851 to $75,000 and to $80,000 in 1853-4 (Code Va. 1860,

p. 417, note). The sum expended by Virginia for primary schools was a regular, current, annual and permanent charge upon the State by virtue of Constitutional and Statutory provisions. Being thus a permanent requirement of its fundamental law it was an expenditure that the State was bound to make annually and was a part of "ordinary expenses of the Government." It was an expenditure general in its character, not confined to or appropriated to any particular district and as much a general charge as the expense of the Judicial or Executive branches or the Board of Public Works which are treated by both parties as ordinary expenses; I therefore disallow the item as an expenditure.

ALTERNATIVE FINDING.

At the request of the plaintiff I find that the sum paid the School Commissioners "within the territory of West Virginia" was $830,865.37.

Item 55, Surveys—$106,416.14.

This item comes from an aggregate of $250,206.56. An analysis of this sum shows by a statement agreed to by the accountants, which is reported as a part of the case and marked "Supplemental Ex. 2," that the sum of $106,983.67 was for expenditures that were general in their character (such as a salary paid by the State to the Chief Engineer $30,809.73, &c.), and the proportion charged to West Virginia of that sum was reached by a percentage based upon the sum that was actually charged upon the books in the different sections, so that the general charge would be in pro-

portion thereto. This left $143,222.89 that was actually charged upon the books of the State and could be traced into each section; the sum that was thus charged and was thus traceable that was expended in the territory of West Virginia was $60,873.19. While it is a narrow and close question, I think the general charge should be deducted from this item and charged under ordinary expenses as they were regular, ordinary and current expenses of a branch of the State Government and general in their character, not allocated to, or apportioned to, any particular territory. It is suggested that many of these surveys were not productive of result, no roads being built. It might also be said that the roads, if built, proving worthless, might have been abandoned. None the less the money would have been expended. No road could be built without the preliminary survey, and if the initial expense, disclosed the unwisdom of proceeding further, it seems to me it was no less an expense properly incurred whether the survey was or not followed by construction and does not affect the fact that the money was expended in that locality for a legitimate purpose. A direct expenditure for the work is treated by both parties as an "expenditure" and for the same reason the survey preliminary to and, if constructed, a necessary part of, the work is also an expenditure. The sum which this branch of the Government actually expended "within the limits of the territory of West Virginia," $60,873.19 I allow as an "expenditure."

Item 56, Trans-Allegheny Lunatic Asylum, $27,000.

It was conceded that on January 1, 1861, this sum was in the hands of the Treasurer of the Asylum unexpended. The record, p. 452, should read "and had not been expended." It was to be used in completing its building. (Rec., p. 471) It was on deposit with the Weston Branch of the Exchange Bank of Virginia and was taken therefrom by the so-called Pierpoint or Restored Government. (Wheeling Acts, Extra Session, July 1, 1861) (App., p. 135) On that date $5,316.98 was "placed at the disposal of the Board of Directors of the Lunatic Asylum" and by an Act passed January 14 , 1862, the sum of $21,684 (making with the previous sum $.98 more than the $27,000) was appropriated to the Lunatic Asylum to be expended in

> "completing the South wing of said building being the balance of the amount taken from the branch of the Exchange Bank of Virginia at Weston" (App., p. 136).

Under the authority of Eastern State Hospital *v.* Graves (*supra*), this money thus in the hands of the Treasurer of the Asylum, prior to its being taken by the Restored Government, was the property of the Commonweatlh, and while it was intended to be used in the completion of the buildings, it had not been so used, and had not therefore been expended on January 1, 1861. I therefore disallow this item.

Alternative Finding.

I find in the alternative at the request of the plaintiff that $27,000 was in the hands of the Treasurer of the Asylum the property of the

Commonwealth on or before January 1st, 1861, for the purpose of being expended in the completion of its buildings and that it was afterwards taken therefrom by the Restored State of Virginia, and returned to the Asylum—$5,316.98 July 1, 1866, and $21,684 January 14, 1862.

Items 57 to 65 inclusive.

These are all for sums paid by the Commonwealth on account of stock subscriptions in Bridge Companies, aggregating $78,412.50, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $78,412.50 was actually paid by the Commonwealth on account of its subscriptions to the stock of the various Bridge Companies mentioned in said items, and that all of the bridges were located "within the territory now constituting the State of West Virginia."

Items 66 to 69 inclusive.

These are all for sums paid by the Commonwealth on account of stock subscriptions in navigation companies aggregating $210,500. and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $210,500 was actually paid by the Commonwealth on account of its subscriptions to

the stock of the various navigation companies mentioned therein and that the property of all of the companies was located within the territory now constituting the State of West Virginia.

Items 70 to 147 inclusive.

These are all for sums paid by the Commonwealth on account of its stock subscriptions to the various turnpike companies mentioned therein, aggregating $803,555.83, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $803,555.83 was actually paid by the Commonwealth on account of its subscription to the stock of the various turnpike companies mentioned therein.

The property of all of these companies except those mentioned in items 70 to 80 inclusive is "within the territory now constituting West Virginia" and aggregates $700,103.49. A portion of the property of the companies mentioned in items 70 to 80 inclusive is in part within those limits. Apportioning the total amount paid to the amount within those limits would give the sum of $103,-452.34.

Items 148 and 149, $391,800.

These are for sums paid by the Commonwealth on account of its stock subscriptions to the banks mentioned therein, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $391,800 was actually paid by the Commonwealth on account of its subscription to the stock of the banks therein mentioned, and that they were located "within the limits of the territory now constituting West Virginia."

Item 150—Loan to the Town of Bath $2,500.

March 8, 1847, an Act was passed,

> "to provide for the construction of a road from Bath in Morgan County to the mouth of the St. John's run on the Potomac."

The Board of Public Works was authorized

> "to pay from time to time out of the fund for Internal improvement a sum or sums of money not exceeding $2,500 to the Treasurer of the Trustees of the Town of Bath * * * for the purpose of constructing a road from the town of Bath to the mouth of St. John's run on the Potomac."

The Treasurer was to

> "pay or deliver such sums as may be required from time to time"

and he was to be liable for any defaults therein "as for other defaults upon his official bond," anticipating the question that might be raised that in the relation thus created the money received by him would not be the town's money and he be liable therefor as its Treasurer (App., p. 155, Sec. 1). The Act provided that the Trustees were to

have "the disposition of the money" and to exercise the same powers as the "president and directors of turnpike companies." The Board of Public Works were to prescribe the tolls "such tolls to be applied to the necessary expenses and repairs of the road" (do., Sec. 2). The surplus after the payment of the

> "necessary expenses and repairs of the road"

was

> "to be applied in payment of the interest on the sum paid on the part of the Commonwealth for the construction of said road"

and

> "Any deficiency of the net surplus of tolls to pay said interest may be paid from the receipts on account of bathing at the medicinal springs belonging to the Commonwealth in said Town of Bath" (do., sec. 2).

In Section 3, it was provided that no part of the appropriation should be advanced

> "until the said Trustees shall have given bond with good security payable to the said Board [not to the Town of Bath] and approved by them for the punctual payment of interest annually on the sum advanced by the Commonwealth for the construction of said Road."

Except for the provisions of Section 3, it is not perceived how the Town of Bath or its trustees would have assumed any responsibility or liability of any kind in connection with the sums used for the construction of the road, except their

faithful disbursement. It had no power to fix the tolls. The trustees were not responsible to the city for the expenditure of the money. It was not the money of the city. There is no intimation in the Act that the Town of Bath or its trustees was to return the amount the State expended or any part or it, or that indicates that the State ever expected it to be returned. In every instance where the State made a loan to which my attention has been called, specific and detailed provisions for security and repayment have been made. The Act must be read as a whole, and so reading it, the only liability assumed by the Town of Bath was to make good any deficit in interest that might exist, after exhausing for each payment, first the surplus of tolls after the payment of the "necessary expenses and repairs of the road" and second, "the receipts on account of bathing at the medicinal springs belonging to the commonwealth in the Town of Bath." That this has not been a very great burden appears from the fact that while nearly 13 years had elapsed the town had paid during that time for that deficit the sum of $750, less than 3% per annum.

It is earnestly insisted that the fact that the auditor of Virginia described this as a loan in his report, that both accountants so described it in their joint schedules and that the act is printed in the appendix under the heading "Loan to the Trustees of the Town of Bath," should be given determining weight in establishing its character as a loan. It is believed that the Act itself and not the manner in which some one has characterized, or described it, must control. It is difficult to conceive of a loan in which the sum loaned is not under some contingency to be returned, an

essential element wanting in this instance. It is also difficult to conceive of the beneficial ownership of a public work the use of which the owner has no right to control. This was not an investment or a loan and comes fairly within the scope of an expenditure "within the territory now constituting the State of West Virginia" and is allowed as such.

SUMMARY.

I find that the expenditures made by the Commonwealth of Virginia within the territory now constituting West Virginia are as follows:

1. Amount agreed upon by both parties	$1,251,288.92
2. Covington & Ohio R. R.	$1,146,460.42
10. Kanawha Turnpike	$ 152,130.54
11. " "	$ 2,593.92
12. " "	$ 7,189.65
13. " "	$ 80,955.28
14. Kanawha River Improvements.	$ 59,572.36
25. Brandonville, Kingwood & Evansville Road	$ 10,595.73
28. Clarksburg & Buchannon Turnpike (Macadamizing)	$ 19,259.36
35. Kingwood & West Union Turnpike	$ 18,140.61
55. Surveys—expended directly within the territory	$ 60,873.19
150. Road from Bath to St. Johns River	$ 2,500.00
Total	$2,811,559.98

ALTERNATIVE FINDINGS:

At the request of defendant.

The Commonwealth received on account of the Blue Ridge Railroad in bonds and interest.... $625,348.08

and was relieved from a contingent liability upon a guarantee of... $100,000.00

3. At the request of the plaintiff, the Commonwealth subscribed and paid for capital stock of the Winchester & Potomac Railroad Company, to the extent of. $120,000.00

The Commonwealth loaned to the said company $150,000.00

Upon the basis of mileage, the proportion of these sums that would be chargeable to West Virginia, is $170,532.00

I state as a special circumstance important to be taken into account that as a result of legislation predicated upon both the stock and loan that the Commonwealth had in this Road, there was paid into the Commonwealth in 1886, the sum of.. $118,518.12

6. At the request of the plaintiff, that the Commonwealth subscribed and paid for stock in the Berryville and Charlestown Turnpike Co. and upon the mileage basis of 58 1/3 per cent. the amount chargeable to West Virginia would be..... $11,932.52

15. At the request of the plaintiff, that the Commonwealth loaned to the Kanawha Board of its bonds ..... $60,000.

56. At the request of the plaintiff, that $27,000
was in the hands of the Treasurer of the Trans-Allegheny Lunatic Asylum, deposited in the Weston Branch of the Exchange Bank of Virginia, unexpended, January 1, 1861, which was afterwards taken from the Bank by the Restored Government of Virginia and subsequently returned to the Asylum.

At the request of the plaintiff, that in the various bridge companies, located in West Virginia. Items 57 to 65, inclusive, the Commonwealth subscribed and paid for stock $78,412.50

That in the various navigation companies located in West Virginia Items 66 to 69, inclusive, the Commonwealth subscribed and paid for stock..... $210,500.00

That in the various Turnpike companies, Items 70 to 147, inclusive, all of which were in the territory now constituting West Virginia, the Commonwealth subscribed and paid for stock..... $803,555.83

700,103.49 of which was wholly in Virginia and $103,452.34 was West Virginia's portion in case of companies partly within her limits.

That in the two banks mentioned in Items 148 and 149, within the territory now constituting the State of West Virginia the State subscribed and paid for stock $391,800.00

At the request of the defendant, I find that the sum of $2,500 was invested under circumstances where the trustees of the Town of Bath assumed a contingent liability, only, of paying the interest upon the sum expended by the State, after the tolls remaining from the operation of the road after the payment of 'necessary expenses and repairs" and profits received from the operation of a spring, were applied thereto, and that this was the only liability that the trustees of the Town of Bath assumed in connection with this expenditure of..... $2,500.

PARAGRAPH IV OF DECREE.

4. "SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA SINCE ANY OF SAID DEBT WAS CONTRACTED, AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA ON THE BASIS OF THE AVERAGE TOTAL POPULATION OF VIRGINIA, WITH AND WITHOUT SLAVES, AS SHOWN BY THE CENSUS OF THE UNITED STATES."

This paragraph involves the determination of the question as to what expenses are to be included within the term "ordinary expenses of the Government of Virginia.

The defendant contends that the language should receive a construction that would make "ordinary" synonymous with "necessary" or "essential" used in the sense of indispensable expenses,—expenses which if not paid the wheels of Government will cease to revolve, without the payment of which the State Government cannot be administered.

Whenever I use the term "essential" in the discussion, I shall use it in the sense of being indispensable. I have made an exhaustive examination of the cases where state or municipal expenditures have been under consideration or in which reference has been made to them. I find there are very few cases that attempt to define the term "ordinary expenses." The term does not appear to have been used with much precision unless it is to be held to be in fact synonymous with "current" or "necessary." There are many cases that use the terms "ordinary" and "current" interchangeably as though they were synonymous and

attention does not appear to have been called to the question as to whether or not there is any distinction between them. They are here cited:

State ex rel. v. Mayor Kansas City, 58 Mo. App., 124-129.

Com. v. Commissioners, 1 Wharton (Pa.), 1-3.

Ward v. Piper, 69 Kan. 773-775.

Iowa R. R. Land Co. v. Co. of Sac, 39 Iowa, 124, 134-135.

Grant v. Davenport, 36 Iowa, 396, 401.

French v. Burlington, 42 Iowa, 614, 618.

Council Bluffs v. Stewart, 51 Iowa, 385, 396.

Windsor v. DesMoines, 110 Iowa 175, 190.

Cedar Rapids v. Betchel, 110 Iowa 196-198.

Swanson v. Ottumwa, 118 Ia., 161-172-179.

Kent v. U. S., 113 F. R., 232, 238-9.

Dawson v. Water Works Co., 106 Ga., 696, 717.

Walla Walla v. Walla Walla Water Co., 172 U. S., 1-20-21.

Smith v. Dedham, 144 Mass., 177-180.

Watkins v. Macon County Court, 68 Mo., 29-42.

Security Co. v. Baker, 33 Ore., 338, 350.

Sherman v. Smith, 12 Texas Civil App. 580-583.

State v. Sheldon, 53 Neb., 365-6.

Valpariso v. Gardiner, 97 Ind., 1-12.
Corpus Christi v. Woessner, 58 Texas, 462-7.
Wichita Falls v. Skeen, et al., 18 Tex. Civ. App., 632-3.
McNeill v. Waco, 33 S. W. R., 322-3.
Luther v. Wheeler, 4 L. R. A., N. S., 746-749.
Arnold v. *Hawkins,* 95 Mo., 569-571.
Cyc, Vol. 28, p. 688.
In re State Warrants, 6 S. D., 518-521.
Lumber Co. v. Munising, 123 Mich., 138-141-2.
Book v. Earl, 87 Mo., 246-255.

The term "ordinary" has frequently been used in the discussion of expenses of this character, as synonymous with "necessary."

The cases that use these terms interchangeably are as follows:

Coffin v. Davenport, 26 Iowa, 515-20.
South Bend v. Reynolds, 155 Ind., 70-73.
Voss v. Waterloo Water Co., 163 Ind., 69-84.
Laycock v. Baton Rouge, 35 La. Ann., 475-480.
Lumber Co. v. Munising, 123 Mich., 138-141.
In re Lim. Taxation, 3 S. D., 456-8.

There are a number of cases that use the term "ordinary expenses" alone, such as the following:

Williamsport v. *Com.* 90 Pa. St., 498-503.
Polk v. *Winett,* 37 Iowa, 34-5.
Cleveland v. *U. S.,* 111 F. R., 341-346.
Law v. *People,* 87 Ill., 385-409.
Water Works v. *Carterville,* 153 Mo., 128-134.
California v. *McCauley,* 15 Cal., 429-455.
Livingston v. *Pippin,* 31 Ala., 542-550.
Scott v. *Peterborough,* 19 U. C., Q. B., 469-472.
Cross v. *Ottawa,* 23 U. C., Q. B., 288-291.
Com. v. *Gregg & ano.,* 161 Pa. St., 582-7-8.
Brown v. *Corry,* 175 Pa. St., 528-31-32.
Nougues v. *Douglas,* 7 Cal., 65-7-8.
Lehigh Coal Nav. Co. Appeal, 112 Pa. St., 360-9.
Stetson v. *Kempton,* 13 Mass., 271-8.
Mills v. *Richland,* 72 Mich., 100.
Marathon v. *Oregon,* 8 Mich,, 372-382.
Quincy v. *Jackson,* 113 U. S., 332-6.
Clark v. *Davenport,* 14 Iowa, 494-501.
Sherman v. *Carr,* 8 R. I., 431.

There are other cases that refer to such expenses as "current expenses" like the following:

White v. *Mayor & Council of Decatur,* 119 Ala., 476-80.

Pettibone v. *West Chicago Park Comrs.*, 215 Ill., 304, 322.
Anniston v. *Hurt*, 140 Ala., 394-9.
E. St. Louis v. *U. S.*, 110 U. S., 321-4.
Sibley v. *Mobile*, 3 Woods (U. S. C. C.), 535-41.
Foland v. *Frankton*, 142 Ind., 546-50.
Spilman v. *Parkersburg*, 35 W. Va., 605-618.
Valpariso v. *Gardiner*, 97 Ind., 1-13.
Humphrey v. *Mercantile Association*, 50 Iowa, 607-611.
Comrs. Leake Co. v. *Keene Savings Bank*, 108 F. R., 505-514.
Brashear v. *Madison*, 142 Ind., 685-690.
Laporte v. *Gamewell and Fire Alarm Tel. Co.*, 146 Ind., 466-470.
State v. *City of Helena*, 24 Mont., 521-30.
E. St. Louis v. *Flannigan*, 26 Ill. App., 449, 463.
E. St. Louis v. *People*, 6 Ill., App., 76-9.
Fowler v. *Austin Mfg. Co.*, 5 Ind. App., 489-490.
Amer. & Eng. Ency. of Law, Vol. 20, p. 1176.
Denison v. *Foster*, 37 S. W., 167.
Weinstein v. *Newbern*, 71 N. C., 535-6.
State ex rel. v. *Graham*, 23 La., 402-407.
City of Erie, 91 Pa. St., 398-402.
C. & A. R. R. v. *People*, 77 Ill., 91-3.

Under the authorities heretofore cited it would seem to be clear that the courts treat the terms

"ordinary" and "current" when applied to the expenditures of a state or a municipality, as synonymous.

The great question in this case is whether interest on the public debt is an "ordinary expense."

The defendant relies upon the line of cases where judgment creditors seeking to recover payments from the revenues of the municipality have been postponed to ordinary, current or necessary expenses, which are made a primary charge upon revenues. The cases clearly establish the general doctrine. From some of them it might perhaps be inferred that interest was not a primary charge or an ordinary, current or necessary expense. I find none of them however where the specific question as to whether interest is or not an "ordinary expense" is discussed. It is very clear that all essential expenses are also "ordinary expenses," but it does not by any means follow that all "ordinary expenses" are essential expenses, that there may not be "ordinary expenses" which are not essential expenses. If it were true that judgment creditors were postponed only to essential or indispensable expenses, the cases might be entitled to considerable significance. On the contrary, however, the postponing of judgment creditors is not confined to essential or indispensable expenses, as expenses which do not come within that class, are often held to be primary in their character and to precede judgment creditors as a charge upon the current revenues.

The following cases show that such current or ordinary expenses as light, water and fire protection, none of which are essential to the revolution of the wheels of government, have been held to be

ordinary or current expenses that will be made a charge upon the revenues prior to the claims of judgment creditors thus demonstrating that the essential character of the expenditure is not the test of an "ordinary expense."

Foland v. *Frankton,* 142 Ind. 546, 550.
Valpariso v. *Gardiner,* 97 Ind. 1.
Cleveland v. *U. S.,* 111 F. R. 341-346.
White v. Mayor and Council of Decatur, 119 Ala., 476,

where the Court thinks that while

> "the support and maintenance of public schools is not an essential municipal function" (p. 482),

they would treat it as a "current expense of administering the municipal government" (p. 482).

Leporte v. *Gamewell,* 146 Ind. 466-70.
Sherman v. *Smith,* 12 Tex. Civ. App. 580-582-3.
Laycock v. *Baton Rouge,* 35 La. 475-81.

In *Sherman* v. *Smith* (*supra*) the Court recognized the fact that expenses for fire, water and lights were not essential but held that they were a part of the current expenses and preferred to judgment creditors.

> "we may consider that they could be dispensed with and an efficient City Government conducted without them" (p. 583).

Expenses for fire, water, lights and repairs and construction of bridges, are held in the following cases to be ordinary or current expenses:

Valpariso v. *Gardner*, 97 Ind. 1.
Brown v. *Corry*, 175 Pa. St. 528-32.
Voss v. *Waterloo Water Co.*, 163 Ind. 69-88.
Brodnax v. Groom, 64 N. C. 244-9.
Satterthwaite v. *Beaufort*, 76 N. C. 153.
Evans v. *Com.*, 89 N. C. 154-9.
McKethan v. *Com. Cumberland*, 92 N. C. 243.
Livngston v. Pippin, 31 Ala. 542-50.

It would seem that the term "necessary town charges" was at least as exclusive and restrictive as "ordinary expenses," and yet it has been frequently held that under that designation, many expenses can be properly incurred, that cannot be held to be essential, or indispensable, to the operations of the government.

The Statutes of Maine authorize, after specifying a variety of purposes for which funds can be raised, the raising of taxes for "other necessary town charges."

In *Gale* v. *South Berwick*, 51 Maine, 174-6-7 in defining that provision the Court said:

> "They embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the powers conferred upon towns. Accordingly they have ever received liberal construction."

Clocks, repair of fire engines, construction of reservoirs to supply water, building a market

house and town halls were cited as illustrations of the proper exercise of the power. In answering an inquiry from the Governor and Council the Court defined this clause as follows:

> "The words 'other necessary town charges' * * * embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the various powers conferred by statute."
>
> Opinion of Justices, 52 Me. 598.

In Massachusetts, under a Statute authorizing a tax for "other necessary charges," the Court held that

> "towns might raise such sums as should be necessary to meet the ordinary expenses of the year"

and that the

> "erection of public buildings for the accommodation of the inhabitants, such as town houses to assemble in, and market houses for the sale of provisions may also be a proper town charge and may come within the fair meaning of the term necessary; for these may be essential to the *comfort and convenience of the citizens.*"
>
> *Stetson* v. *Kempton*, 13 Mass. 271-8.

Under this clause towns can indemnify officers in the *bona fide* discharge of their duties.

Bancroft v. *Lynnfield*, 18 Pick. 566.

Make repairs on clocks,

Willard v. *Newberryport*, 12 Pick. 227.

Invest in fire engines,

Allen v. *Taunton,* 19 Pick. 485.

Build a market house,

Spaulding v. *Corcall,* 23 Pick. 71.

A town house,

Friend v. *Gilbert,* 108 Mass. 408.

"Make contracts necessary and convenient for the exercise of their corporate powers,"

Agawam Nat. Bank v. *South Hadley,* 128 Mass. 503-5,

and build a public hall—

Wheelock v. *Lowell,* 196 Mass. 220.

These cases clearly extend the scope of necessary town charges beyond those which are absolutely essential or indispensable to the orperations of government. Great stress was laid in the argument upon the part of the defendant upon the particular language of the decree which requires a finding of the "ordinary expenses of the Government". The Ordinance upon which the decree is predicated reads in this particular: "the ordinary expenses of the state government". The language of the decree so far as there is any distinction is less emphatic if regard is had to the technical language used, the word "state" being omitted, but it is improbable that any significance is to be attached to the omission, and very doubtful if the Court had in mind in making the decree the distinction con-

tended for. The argument is that the ordinary expenses are confined to the expenses of *"the state government"* or of *"the government"* as contradistinguished from what might be termed in a broader sense state or municipal expenses. The contention being that there are expenses which are proper expenses, on the part of the state that the not essential, or indispensable, to the operations of the Government, and that the language of the ordinance and the decree mean that the ordinary expenses "of the government" or "of the state government", are essential expenses, and thus limit the ordinary expenses, to such expenses, as are indispensable to the operations "of the state government."

I find that similar language has been frequently used in the opinions, without attributing to it the technical and restrictive meaning contended for by the defendant. It has quite clearly been used as synonymous with state or municipal expenses generally rather than as restricting the term to essential expenses.

In *White* v. *Mayor & Council of Decatur,* 119 Ala., 476, the court referred to current, legitimate municipal expenses and in the same paragraph referred to the same expenses as *"governmental expenditures"* (480) and "current expense of administering the municipal government" (p. 482) evidently meaning the same thing. The Court expressly held in that case that while the support and maintenance of public schools are not an essential, municipal function, they would treat is as a necessary *"governmental expenditure"* as that function was "vested in the Mayor and Council of Decatur" by statute and the "power and duty" were "in and upon them".

In *Anniston* v. *Hurt,* 140 Ala. 394, 400, the Court referred to "necessary expenses of *administrating the municipal government*" and "the object of corporation expenditures" and "expenses for *governmental purposes*" and "expenditure for *administration of governmental purposes*" and "necessary current expenditures" as apparently meaning one and the same thing. The question of what was or was not an "ordinary expense" did not arise in that case, and the Court discussed the question as to whether interest was or not a necessary current expenditure as a question depending upon the construction of the particular statutes being discussed.

In *City of Erie,* 91 Pa. St. 398, the Court referred to "ordinary expenses of *the City Government*" (p. 403) without indicating that they were confined to expenses indispensable to the operations of the government.

In *Corpus Christi* v. *Woessner* 58 Tex. 462-7, the Court referred to ordinary, "current expenses of *her local government*" in the same connection in which they speak of current and ordinary expenses, and without a suggestion of any distinction between governmental and current or ordinary expenses.

In *Nougues* v. *Douglas,* 7 Cal. 65-7-8, the Court referred to "ordinary expenses of *the state government*" and "ordinary expenses *of the state*" and "the expenses *of the state government*" and the necessary and "ordinary expenses *of the state*" and the "ordinary expenses of government", evidently meaning the same thing in each instance.

In *Weinstein* v. *Newburn*, 71 N. Y., 535, 536, the Court speak of "current expenses of the city *government*" and "the necessary current expenses" clearly meaning the same thing.

In *Sherman* v. *Smith*, 12 Tex. Civ. App., 580, 583, the court likewise referred to "her current and ordinary expenses" and then "for the payment of expenses of government," and "proper current expenses" (p. 584) all meaning the same thing. In Wilson *v.* Charlotte, 74 N. C., 748, 749, the Court referred to "the necessary expenses *of the government of a city*" (p. 759) clearly meaning "necessary expenses of the year," and with the same meaning the Court in Mills *v.* Richland, 72 Mich., 100, 107, said "necessary expenses incurred in administering *the government* of the township." So in Herman *v.* Oconto, 110 Wis., 666-678, the Court said "such as are necessary to carry on *the city government.*"

The frequency with which this language has been used by the Court with its general signification would seem to indicate that the language of the decree is hardly entitled to the technical construction relied upon by the defendants.

Did the framers of the ordinance have in mind any distinction between "ordinary expenses of the state government" and ordinary expenses of the Commonwealth? What distinction is there between them in their relation to a "just proportion of the public debt"? Are they not each equally a common burden paid from a common fund for the common benefit? What reason is there that would require the inclusion of one that would justify the exclusion of the other?

Moreover, the defendants concede as ordinary expenses items which do not appear to be essential to the revolution of the wheels of government.

Board of Public Works, Salaries and Expenses	$134,108.03
Deaf, Dumb and Blind Institute	$384,161.09
Geological Survey	$42,480.61
Lunatic Hospitals	$1,635,583.36
Military Establishment	$1,030,694.11
Primary Schools	$655,908.73
University of Va	$613,287.00
Virginia Military Institute	$207,084.87

(Defts.' original Ex. D 1.)

There are very few cases undertaking to give anything like a definition of what "ordinary expenses" are, and perhaps with but one exception none of those are very closely in point on the question of interest, though a number of them give definitions broad enough to include interest.

In *East St. Louis* v. *U. S.*, 110 U. S. 321, the Court in discussing the general question of municipal expenses said:

> "That fund by the terms of the Charter of the City under which the bonds were issued is authorized for the purpose of paying the necessary, current expenses of administration *not including payments on account of the bonds of the municipal corporation*" (p. 324).

The fact that the Court found it necessary to exclude specifically from the scope of "necessary current expenses" bonds of the municipal corporation gives rise to some inference at least that they understood that without such exception such bonds would be fairly included within the

term "necessary current expenses." If payment on account of bonds was included interest on the bonds would also be included.

In *Wilson* v. *Charlotte,* 74 N. C., 748, the Court said:

> "It would be difficult or impossible to draw a precise line between what are and what are not the necessary expenses *of the government* of a city. The analogy of the law of necessaries for infants is the only one that occurs to us. It is held, that if, considering the means and station in life of the infant. the articles sold to him *may* be necessaries under any circumstances, they come within a class for which the infant may be liable, and upon his refusal to pay, it is for a jury to determine whether under the actual circumstances they were necessary. If, however, the articles are merely ornamental, and such as cannot, under any circumstances be necessary to one of the means and station of the infant, a Court may, as matter of law, declare that the infant is not liable. We do not undertake to say that this analogy will furnish a rule which will admit of a close application, but if treated merely as an analogy in the absence of other guides, it may be of some general use (p. 759).

In *Brown* v. *Corry,* 175 Pa. St., 528, the Court said:

> "The ordinary expenses, at least many of the ordinary expenses, must be incurred and paid or the city cannot exist. * * * And any expense that recurs with regularity and certainty and is necessary for the existence of the municipality, or for the health, comfort and perhaps convenience of the inhabitants may well be called an ordinary expense" (p. 531).

In *Mills* v. *Richland,* 72 Mich., 100, the Court said:

> "What shall be deemed as the ordinary expenses of a township is a question which has never received any very satisfactory answer, and it would be difficult to glean one from what has been said in this Court. I think, however, it may well be said the answer can *never include less than the necessary expenses incurred in administering the Government* of the Township under the Statutes creating it and relating thereto, in such manner as will best promote the convenience, peace, health, prosperity and happiness of the people residing therein. This would, as has been held by this Court in *Marathon* v. *Oregon,* 8 Mich., 382, include the payment of the indebtedness to the Township of Mills" (pp. 106-7).

It seems that the Town of Richland had been set off from Mills and this was an action to recover a portion of the debt due from Richland to Mills. The opinion in *Marathon* v. *Oregon* above cited, proceeds upon the peculiar language of the statute being construed. It authorized the Township

> "to vote such sums as they may deem necessary for defraying *all proper charges and expenses arising in the Township*" (p. 381).

and the Court held that both charges and expenses were included in the term ordinary township expenses, saying

> "It is certainly no violation of terms to class the payment of debts ascertained among ordinary expenses" (p. 382).

In *Smith* v. *Dedham,* 144 Mass., 177, 180 the Court seemed to make annual payment the criterion as they held that an annual payment for water for a period of five years was "for a sum of money to be paid annually, among the *other* current expenses of the town."

In *Livingston* v. *Pippin,* 31 Ala., 542-50, the Court gave this definition, "Ordinary expenses are the expenses which are necessary to carry into effect the ordinary powers of the corporation. * * * Under the rule above laid down, the implied and incidental powers of corporations must be classed as ordinary powers"

In Herman *v.* Oconto, 110 Wis., 660, the Court said:

> "It cannot be said with any show of right that the building of a sewer system is a current expense. While it is not easy to accurately define what may be included under that head still it is plain that it must be limited to such as are necessary to carry on the city government—such as are usual and ordinary from year to year" (p. 678).

The case of *State* v. *Leaphart,* 11 S. C., 458, is very closely in point. All three of the judges wrote opinions, and all concurred in holding that interest was an ordinary expense. *C. J. Willard,* in his opinion, said:

> "Ordinary expenses include the current expenses of the government and debts to mature during the current fiscal year" (p. 469).

> "* * * to such purposes as properly fall within the description of 'ordinary expenses of the government,' that is to current expenses and debts maturing during the fiscal year" (p. 471).

He held that the Act being construed could only be regarded as a general annual tax levied for ordinary expenses, and ordered a mandamus to issue for the payment of the interest on the public debt out of the tax as an "ordinary expense." *Haskell, J.,* said:

> "When bonds have been issued to raise money to meet an 'extraordinary expenditure' they become a standing liability of the State, and the interest as it falls due becomes an 'ordinary expense' to be included within the 'estimated expenses,' to make up the amount to be levied annually and appropriated annually" (p. 477).

and again

> "The only difference between the interest on such bonds and any other annual expense is, that the interest is made by the Constitution, an obligatory expense, while many other expenses may be at the option of the legislature" (p. 477).
>
> "The tax is levied for the expenses of the current fiscal year. The objects to which the tax *must* be applied are the items contained in those estimated expenses. Expenses include the payment of recognized indebtedness as well as any outlay that the Legislature may deem proper to make during the year" (p. 478).

The case showed that

> "The Act of 1876-7 provides for the payment of the current expenses of the govern-

ment and certain indebtedness matured or to mature. It is therefore clearly a general tax levied as such, entirely subject to the control of the legislature *provided* the purposes to which it is appropriated fall within the general class of 'ordinary expenses' " (p. 471).

The mandamus was prayed for among other things to secure the payment of interest falling due Jan. 1, 1879. McIver, Judge, who dissented upon one point held that the relator was entitled to a mandamus for the interest for that year.

This case was cited with approval in *State* v. *Derham*, 61 S. C. 258, 262. The plaintiff relies upon *In re Limitation Taxation*, 3 S. D. 456 where the Court said:

> "The 'ordinary expenses' of the state are practically defined in Section 2, Art. 12 of the Constitution and are the 'ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of the state institutions, interest on the public debt and for common schools' " (p. 460).

An examination of the Constitutional provision thus referred to discloses the fact that it does not purport to define "ordinary expenses" but simply provides that

> "The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the State, the current expenses of the state institutions, interest on the public debt, and for common schools" (Con. Art. 12, Sec. 2).

So far as this case has any weight, it tends to negative the contention of the plaintiff. Properly

considered it gives no definition and incorrectly states the effect of the constitutional provision. It is contended upon the part of the plaintiff that the term "ordinary expense" is flexible in its character and is to receive a construction in harmony with the circumstances and conditions under which it is used. It was urged in argument upon the part of the defendant that it was in a sense analogous to the term "necessaries," the analogy used by the Court in the case of *Wilson* v. *Charlotte* (*supra*). If it be true that the analogy exists, it would clearly establish the flexible or varying character of the meaning of the term, as it is too clear for the citation of authorities that necessaries may include articles in connection with one individual that would be clearly excluded when applied to another individual. Ordinary expenses involves the payment of at least current indebtedness. There may be some parallel between an expense and a debt. It has been frequently held that the word debt "has no fixed legal signification, as has the word 'contract,' but is used in different statutes and constitutions in senses varying from a very restricted to a very general one."

McNeill v. Waco, 33 S. W. R., 323 (*supra*).

Swanson v. Ottumwa, 118 Ia., 161-171 (*supra*).

The case of *Union Pac. R. R. v. U. S.*, 99 U. S., 402, was relied upon by the defendant, so far as applicable. The Court were there discussing the question as to what would be the net earnings as distinguished from the gross earnings of a railroad company, and they said:

"As a general proposition net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, aside from, and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves. It may often be difficult to draw a precise line between expenditures for construction, and the ordinary expenses incident to operating and maintaining the road and works of a railroad company. Theoretically, the expenses chargeable to earnings include the general expenses in keeping up the organization of the company, and all expenses incurred in operating the works and keeping them in good condition and repair; whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent *enlargement and improvement* thereof. With regard to the last mentioned class of expenditures, however, namely, those which are incurred in enlarging and improving the works, a difference of practice prevails amongst railroad companies. Some charge to construction account every item of expense, and every part and portion of every item, which goes to make the road, or any of its appurtenances or equipments better than they were before; whilst others charge to ordinary expense account, and against earnings, whatever is taken for these purposes from the earnings, and is not raised upon bonds or issues of stock. The latter method is deemed the most conservative and beneficial for the company, and operates as a restraint against injudicious dividends and the accumulation of a heavy indebtedness" (pp. 420-1).

So far as this case has any significance it seems to establish the proposition that the term ordinary expense has no fixed and arbitrary significa-

tion; that it may include at one time what would be excluded at another time. The Court in that case adopted the broad construction, on the ground that it was the "wisest and most prudent method," and was what they called "a liberal application of the earnings to the improvement of the works."

If the case of *City* v. *Leaphart* (*supra*) is to be treated as an authority, the interest would clearly be an ordinary expense.

If current or ordinary expenses are the converse of current or ordinary revenue, then interest in this case would be an ordinary expense, as it was expressly provided for in the current or ordinary revenues, and made mandatory by the constitution.

In the classification adopted by the United States Treasury Department (Rep. Sec. Treas., 1874, pp. IV and V, do. 1904, House Doc., 58th Cong., Vol. 31, p. 5), and by the United States Census Office (11th Census, Vol. 50, pt. II, pp. 418-19, 464-77, 516-553, 556-7), and the State of Ohio, Rep. Bureau Insp. and Sup. of Pub. Off. of 1906, pp. 72-79, interest is classified as an "ordinary expense." It is so held by Bastable on Public Expenditures, pp. 130-3.

There are several important considerations to be taken into account in determining this question:

First.—The cases of judgment creditors seeking to secure payment out of the ordinary or current revenues of a municipality are certainly not directly in point. This is not a controversy between a judgment creditor and a municipality. It does not involve the question as to whether, if

a claim against the municipality were allowed, there would still remain sufficient current revenues for the payment of either the indispensable or the ordinary and current expenses of the state. It is a question between two parties who were jointly interested in the incurring of a joint liability and the question to be determined is what proportion of this joint liability is to be assumed by each. This is the question whether it be reached under the Wheeling Ordinance or under the general principles of International Law. There is therefore no warrant for applying the strict construction that would be applicable in the case of an action by a judgment creditor.

Second.—The Constitution of Virginia makes the interest upon the public debt a specific annual charge upon the revenues:

> "There shall be set apart annually from the accruing revenues a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The sum thus set apart shall be called the Sinking Fund and shall be applied to the payment of the interest of said debt and the principal of such part as may be redeemable."
>
> (Con. of Va., Art. IV, Sec. 29, Code Va., 1860, p. 47.)

With this specific Constitutional provision requiring "the interest of said debt" to "be set apart annually from the accruing revenues," it may well be doubted whether if this were an action by a judgment creditor against the state, the Courts would not be required by the constitu-

tion to postpone such creditor to the payment of interest on the ground that it was not only an ordinary expense, but was a specific constitutional security, annually to be set apart for the benefit of the state's creditors, which would be preserved inviolate for the benefit of the holders of the interest on its public debt.

Third.—Under the provisions of the Ordinance, the defendants are to be charged with the amounts expended within the limits of West Virginia. In order to make these expenditures Virginia hired the money and has paid the interest thereon. If interest is not an ordinary expense, West Virginia would be charged with the principal sum thus hired and expended, but would not be charged with the sums thus paid by Virginia for the use of the money thus hired and expended. If the money thus hired and expended is a proper charge it is upon the theory that Virginia should be reimbursed therefor, and no reason is perceived why she is not on general principles, as much entitled to be reimbursed the sums, that she has paid for the use of the principal sum, as she is to be reimbursed for the principal sum itself. No good reason has been suggested why, as a matter of equity, if liable for the principal sum, West Virginia is not also liable for interest thereon. Unless allowed as an ordinary expense, she will not pay any part of the interest, and the whole burden of the payment of interest, will be assumed by the State of Virginia, a result which would be clearly inequitable.

It is not an adequate answer to say that the Commonwealth has had the use of the improvements, because these improvements are local in

their character, and so far as the public use of them is concerned, that use has been confined to the limits of West Virginia. If allowed as an ordinary expense, the portion of the Commonwealth that has derived the local benefit from the use, would also assume the burden of paying its proportion, for the use of the money thus expended, otherwise, the remainder of the Commonwealth which has had no benefit from the use, would be paying for the use of all the money thus expended. If tolls were received by the Commonwealth from any of the public improvements, on account of which expenditures are charged, each portion of the Commonwealth has received its pro rata benefit therefrom. The disbursements made by the Commonwealth during this period came from three sources, loans, income and taxation. As the income increased or decreased, the sums raised by taxation necessarily decreased or increased, each section receiving in accordance with the proportion of the burden it was assuming, its proportional benefit of the income, thus received. Just how a "just proportion" of the ordinary expenses is to be ascertained does not appear, but in reaching the conclusion as to what an ordinary expense is, I must assume that it will be ascertained upon a proper basis, and that every legitimate consideration tending to determine the "just proportion" will be given due weight.

That the term "ordinary expense" is not fixed and definite, but is more or less flexible and varying in its meaning, is, I think, reasonably well settled by the authorities.

If, as used in the decree, it is of doubtful meaning, and is open to two constructions, one of

which would produce an equitable result, the reading, with the decree, of the constitutional provision requiring the assumption by the State of an equitable proportion of the debt, would require the doubt to be resolved in favor of the equitable result.

It seems to me upon reason and authority that the interest upon the public debt of the State of Virginia is "one of the ordinary expenses of the Government of Virginia" within the meaning of the language of the Wheeling ordinance and the decree predicated thereon.

Extraordinary Expenses.

The question as to what is an "extraordinary expense" seems to be well settled.

In *Supervisors* v. *U. S.*, 18 Wall, 71, 79, the Court referred to aid in the erection of buildings as "an extraordinary expenditure."

In *Union Pac. R. R.* v. *U. S.*, 99 U. S., 402, the Court referred to expenses for the "enlargement and improvement" as capital expenses.

In *South Bend* v. *Reynolds*, 155 Ind., 70, 73, the Court held that

> "While the rent for suitable offices for city officers is an ordinary and necessary expense, the erection of a city hall or a building for the use of the city officers is not in any sense an ordinary expense, but is an extraordinary one."

In *Voss* v. *Waterloo Water Co.*, 163 Ind., 69, 85, the Court held that the construction of water works or an electric light plant

> "is not in any sense an ordinary and necessary expense, but an extraordinary one."

because such an expense involved

> "municipal ownership of the water and light plant, the means of furnishing said water and light, and is an extraordinary expense."

In *Brown* v. *Corry,* 175 Pa. St., 528, 532, the Court said:

> "I can see a very clear distinction between 'a contract for the supply of water and one for the means of furnishing the supply.' The one may pertain to an ordinary expense, and the other, if it involves municipal purchase and ownership of the means of furnishing the supply, can only pertain to an extraordinary expense."

See also *Grant* v. *Davenport,* 36 *Ia.,* 396, 403.

In *Book* v. *Earl,* 87 Mo., 246, 256,

> "Remodelling and building three new additions to the Court House"

was held not to be an ordinary expense but an extraordinary expenditure.

In *Mills* v. *Richland,* 72 Mich., 100-6-7, the expenses of "establishing lost section corners" and "building a town hall" were held not to be included within the term "ordinary expenses."

In *Helena Water Co.* v. *Helena,* 31 Mont., 243, the Court held that the installation of a water plant was not a "current expense" as it was an expense that partakes of the nature of an investment, or such as are to be incurred in a substantial or permanent improvement.

It seems to be well established that the construction, "enlargement and improvement" of a plant are a capital investment, an extraordinary expense, and that its maintenance and operation is an ordinary expense. It is not perceived that there is any substantial distinction between the increase of the size of the plant and amount of the investment and the original construction or the original investment. If it is construction, addition to plant, "enlargement and improvement;" an investment, and not maintenance or operation, then it is an extraordinary expense.

The parties agree upon items making up an aggregate of the ordinary expense of government of $18,207,684.29 (Rec., p. 515). They reach this amount by deducting from an aggregate of receipts, of $18,761,154.51, the sum of $553,470.22. This sum is the result of eight items. Deft. original Ex. D-1 p. 4.

Inspectors of Tobacco		$389,694.91
Less Expense of Commissioners	$33,698.36	
Refunds	203.46	
Paid for burnt Tobacco	2,669.13	
		36,570.95
Leaving a balance of..		$353,123.96
Inspection of vessels		2,621.26
Land office Registration fees		177,115.05
Tax on private seal		2,090.60
Tax on Express Companies		2,199.71
Tax on Insurance Companies		6,533.99
Weighmaster of Live Stock	$8,493.32	
Less cost of scales	3,019.78	
		5,473.54

Miscellaneous	4,312.11
	$553,470.22

No. 1. Tobacco Receipts.

The seven items following the tobacco item are evidently of the same character and should be treated in the same manner, but for an admission of the plaintiff. The plaintiff admits them as credits, not because they are proper items of credit, but only for the purpose of reaching an agreement as to the amount of that schedule, and the propriety of treating the tobacco item as a credit, is not to be affected by that admission. If the tobacco item is not a proper credit, it is to be added as an ordinary expense to the sum of $18,207,684.29, agreed upon, as in reaching that sum it has already been deducted, and the charge will offset the credit. Virginia made elaborate provision for the inspection of tobacco. It contemplated first adequate protection to its great industry, and second, revenue. The law specifically provides that the salaries of the inspectors "are to be paid out of the receipts for inspection at such warehouse, and in no case is the state to be charged therewith, or with any other expense of such warehouse" (App. 157). The state in fact paid nothing on this account. The whole amount collected, $389,694.91, was reduced by the sum of $36,570.95 for expense of commissioners, refund, and paid for burnt tobacco and the balance, $353,123.96, was paid into the treasury. This sum was not an expense of any kind. It was a receipt, and was not predicated upon an expense. I have authority to state disbursements only, not

receipts. For the reasons above given I treat it as an ordinary expense, and add to the agreed sum, $353,123.96.

ALTERNATIVE FINDING.

At the request of the defendant, I find that the Commonwealth received during the period prescribed from tobacco receipts the sum of $353,123.96.

Item 2—Constitutional Conventions, $258,906.28.

The fact that the decree requires a finding of the "ordinary expenses of the Government of Virginia" raises the necessary inference that there are expenses other than ordinary. Such expenses are both legitimate and proper but do not come within the definition of ordinary. Ordinary is defined by the Century Dictionary as "of the usual order, usual, customary, common", and by Webster as "2. Common, customary, usual." Anderson's Law Dict.: "common, usual, reasonable." These definitions come fairly within such definitions as the Courts have given and to them may be added such as recur with regularity and certainty. The only question to be determined is whether the various items claimed by the plaintiff are usual, customary, common, recurrent, annual or regular in their character.

There have been two Constitutional Conventions during the period covered—one in 1829 and one in 1850 (App., pp. 159-160). That these conventions were a legitimate and proper exercise of a governmental function and that the expenses at-

tendant thereon are both legitimate and proper is unquestionably true. It certainly cannot be considered as a usual, customary, regular or common expense. It does not come within the scope of an ordinary expense within the meaning of the decree and the item is disallowed.

ALTERNATIVE FINDING.

I make an alternative finding at the request of the plaintiff that there was actually expended by the Commonwealth for expenses attendant upon two Constitutional Conventions, held in 1829 and in 1850, the sum of $258,906.28.

Item 3.—Slaves transported and executed, $311,168.35.

This item is admitted by the defendant.

Item 4—Boundary lines $16,704.78.

These boundary lines were run under the authority of specific acts of the legislature passed in 1822, 1833, 1847, 1858 and 1860 (App., pp. 166-171). Nothing appears in the record to indicate that this expenditure was one that could be called usual, customary, common, regular, or annual. On general principles the expense incurred in settling a boundary line could hardly be expected to recur so as to be in any proper sense, usual or customary. I disallow the item.

ALTERNATIVE FINDING.

I make an alternative finding at the request of the plaintiff that under the acts of the legislature

above referred to, the Commonwealth actually expended in running boundary lines, $16,704.78 within the time prescribed.

Item 5—Maps (Commonwealth)	$16,628.04
" (Board of Public Works)	11,446.48
	$28,074.52

The maps of the Commonwealth appear to have been made by virtue of the provisions of the statutes enacted in 1825, 1828, 1836, 1848 and 1853 (App. pp. 172-175). These acts all relate to specific maps for specific purposes, and none of them indicate that the work is to be one of a continuing character, usual, customary or common. The maps provided for once prepared, the office of the legislation was apparently accomplished.

I disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiffs that the Commonwealth expended under and by virtue of the various acts of the legislature above referred to for maps, within the time prescribed, the sum of $16,628.04.

As to the item of $11,446.48, for maps for the Board of Public Works, I think a different rule applies.

It is conceded that the salaries and expenses of the Board of Public Works are an ordinary expense. It was a great and important branch of the government exercising control over its expenditures and discharging responsible duties involv-

ing a great many details. It is hardly to be expected that each item of expense incurred by this Board in the discharge of its duties would be duplicated or repeated so as to become as to that item usual, customary or continuing in its character.

Yet all the expense incurred by the Board in the proper discharge of its duty would be properly incurred and within the contemplation of the legislation creating the Board as a continuing body and investing it with its duties and responsibilities. Its expenses should be treated as a whole. All expenses that were reasonably necessary to the proper discharge of its duty are proper expenses, and should be included as a part of its aggregate of expenses and are, I think, fairly within the scope of the ordinary expenses of the Board. Maps for their use in the development of public improvements were such an expense, and I therefore allow the sum of $11,446.48 as a part of the ordinary expenses of the Board of Public Works, and therefore a part of the "ordinary expenses."

ALTERNATIVE FINDING.

I find at the request of the defendant that the sum of $11,446.48 was expended by the Board of Public Works within the time prescribed for maps for its use.

Item 6—Deaf, Dumb and Blind Institution, $80,661.94.

The details making up this item are found on pages 521-522, 523, Joint Ex. D-1, pp. 5, 6 and 7.

All of these items were expended either for original construction or "enlargement and improvement" of plant, each of them increasing the investment of the Commonwealth in the Institution. None of them were involved in its maintenance and operation, and under the authorities they were all extraordinary expenses and are therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the aggregate sum of $80,661.94 was expended within the time prescribed by the Commonwealth in original construction and additions and "enlargement and improvement" of the plant of the Deaf, Dumb and Blind Institution, the details of which are specifically mentioned on pages 5, 6 and 7 of Joint Exhibit D. 1 (Rec., pp. 521-2-3).

Item 7—International Exchanges, $2,836.19.

This money was expended under the provisions of a statute of 1848 (App., pp. 185-6), which authorized an exchange between the United States and the French Government of various public documents. The act contemplates a continuation of such exchanges. It requires "a report annually to the joint committee of Library" indicating that a permanent annual exchange was contemplated by the Legislature.

I allow it as an ordinary expense, $2,836.19.

Item 8—Overpayment of Treasury notes, $50.

Nothing appears to show that this was a usual or customary expense or that it occurred more than once, or as to the circumstances under which it did occur. I infer that it was paid on the error of some officer, and it could hardly be assumed that such errors would become usual and customary.

I disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth overpaid on Treasury notes within the time prescribed the sum of Fifty Dollars ($50).

Item 9—Printing Treasury Notes, $375.74.

This expense was incurred under the provisions of an Act passed in 1856 authorizing the issue of Treasury notes (App., pp. 186-187). The Act contemplated a permanent method of borrowing money by Treasury notes "issued from time to time." While an appropriation is made for only three years, there is nothing in the Act that indicates that its operation was to be confined to any limited period of time. It contemplates an indefinite continuation of the work provided for.

I allow the item as an ordinary expense, $375.74.

ALTERNATIVE FINDING.

I find at the request of the defendant that the Commonwealth paid within the time prescribed for printing Treasury notes under an Act passed in 1856, $375.74.

Item 10—Loss on account of counterfeit money, $190.

There is nothing in the record that discloses the circumstances under which the loss occurred, and I can only infer that it was one of the sporadic instances that might or might not occur in connection with a currency issued by the State. I cannot assume that such loss would be continuing, usual, or customary.

I disallow the item.

ALTERNATIVE FINDING.

I find at the request of the plaintiff that the Commonwealth lost within the time prescribed on account of counterfeit money $190.00.

Item 11—Virginia Military Institute, new buildings, etc., $151,000.00

The items making up this aggregate (found on pp. 524 and 525 Joint Ex. D-1, pp. 8 and 9) are all for the erection of and additions to, enlargements and improvements of, buildings connected with the Institute, and installing of heating and lighting plants and are within the rules laid down extraordinary expenses, and therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiffs that the Commonwealth expended in the erection of buildings and additions thereto and enlargements and improvements, and in-

stallation of heating and lighting plants, connected with the Virginia Military Institute the sum of $151,000, the details of which appear on Joint Ex. D 1, pp. 8 and 9 within the time prescribed.

Item 12—University of Virginia, Repairs and Improvements to Buildings and Water Supply, $25,000.00.

This sum was expended for "repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said Institution" (p. 526 Joint Ex. D-1, p. 10).

Repairing the buildings would undoubtedly be an ordinary expense. The burden is upon the plaintiff to establish the ordinary expenses. Nothing is contained in the record that will enable me to ascertain what part of the $25,000 was expended for repairs, and in the absence of that information, no other course is open than to disallow the item, inasmuch as a portion of it at least is for an extraordinary expense. The analogy is very close between an item of this character and a case where a non-lien and a lien claim have been joined, in which case it is well settled that the introduction of the non-lien claim, reduces the whole claim to the character of a non-lien claim.

I therefore disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended $25,-

000 in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation of said buildings and other valuable property of the University of Virginia" within the time prescribed.

Item 13—Improvements Public Square, $1,456.91.

This item is admitted by the defendant.

Improvements Capitol Square, $12,278.47 (Rec. 528 Joint Ex. D-1, p. 12).

All of the items making up this aggregate appear to have been either for construction of additions to buildings, "enlargements or improvements," or installation of water and light plants, and the item is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended, within the time prescribed for additions to buildings, "enlargements or improvements" and installation of water and light plants, $12,278.47, the items of which appear on page 528 Joint Ex. D-1, p. 12.

Item 14—Fugitive Slave Expense and reward additional, $2,201.00.

This item is agreed to.

Item 15—Penitentiary Lot, New Hospital Building, etc., $13,947.48.

This item is made up of items for the erection of buildings, completing improvements, "enlargements and improvements," and installation of a water supply, and is disallowed.

ALTERNATIVE FINDING.

I find in the alternative, at the request of the plaintiff, that the Commonwealth expended, within the time prescribed, the sum of $13,947.48 for the erection of buildings, completing improvements, and installation of water supply, the items of which appear on Rec. 529 Joint Ex. D-1, p. 13.

Item 16—Calling out militia at Wheeling in 1836, $1,099.

The militia appear to have been called out under the provisions of the Militia Law, and an Act was passed in 1838 (App., p. 222) giving them the "usual pay of the militia when in actual service." For the reasons hereafter given in connection with the Harpers Ferry Item, this item is allowed as an ordinary expense.

Item 17—Medical College of Virginia, additions and improvements to buildings, $25,000.

This was expended for enlarging the hospital and infirmary and extending the college buildings and for improvement and extension of the college museum, and was an "enlargement and improvement" (Rec., p. 530, Joint Ex. D-1, p. 14), and is an extraordinary expense and is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended $25,000 for "enlarging the hospital or infirmary, for extending the college buildings and for improvement and extension of the college museum" within the time prescribed.

Item 18—Attorney General's fees, prosecuting Selden Withers & Company, $500.

This item stands with an item "Selden Withers & Co. from Miscellaneous, $9,351.45," which with other items make the aggregate of item "23 Sundry B. P. W. expenses $36,728.50" (Sup. Ex. 10). It is conceded that the Selden Withers & Co. $9,351.45 was "a part of the expense of selling the bonds of the state." This item of $500 being of the same character, an advance fee for collecting the Selden Withers & Co. item, for the reasons given under item 5 as to maps for the Board of Public Works, is allowed.

Item 19—Eastern & Western Asylums, $344,295.57.

All of the items making up this aggregate (found on pp. 531, 532, 533, 534, 535, 536, 537 and 538 of Rec. Joint Ex. D-1, pp. 15, 16, 17, 18, 19, 20, 21 and 22) are for additional buildings and completing buildings and installing water plants with the exception of an item of $5,000 (Rec., p. 532; Ex. D-1, p. 16), and $7,450.01 (Rec., p. 538, Ex. D-1, p. 22) and are therefore in the nature of construction, additions to plant and increase of the investment of the state in the plants

and are extraordinary expenses and therefore disallowed.

The item of $5,000 was expended under the Act of Feb. 14, 1844 (page 16, Chap. 11) which authorized an expenditure of $5,000 "for the purpose of remodelling and repairing the body of the old building."

Repairing is clearly an ordinary expense. Whether remodelling would be or not would depend upon the character of the work contemplated The second section of the Act provides:

> "that before the repairs mentioned in the preceding section shall be contracted for, &c."

apparently treating "remodelling and repairing" as repairs. As to this item, I think it is reasonable to conclude that the remodelling was in the nature of repairs and that the item is an ordinary expense, and I therefore allow it as such $5,000.00
The item "support" is admitted 7,450.01

With these exceptions the aggregate is disallowed.

The items of $7,000 on page 532, and $17,750 on page 533, include repairing among other items. It is impossible to separate the items of repair from the other items and they are disallowed for that reason.

Alternative Finding.

I find in the alternative at the request of the plaintiff under this item, that the Commonwealth expended within the time prescribed the aggregate of $331,845.56, for additional buildings, completing buildings and installing water plants.

Item 20—Gun House at Alexandria.... $900.00

Item 21—Cannon House, Surrey Co.... 110.00

Item 22—Cannon House for Richmond Artillery 1,079.09

These items are all for construction of buildings, the last two by virtue of special acts therefor (App., p. 246) are extraordinary expenses and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended within the time prescribed for the purposes above indicated in the items 20, 21 and 22, the sum of $900, $110 and $1,079.09, respectively.

Item 23—Sundry Board of Public Works expenses $36,728.50

"Supplemental Ex. 10."

All of the items making up this sum appear to have been legitimate expenses of the Board of Public Works, reasonably and necessarily involved in the discharge of their duties and are therefore, for the reasons above given under Item 5 as to maps for the Board of Public Works, reasonably within the scope of the ordinary expenses of the Board of Public Works, and are to be treated as an ordinary expense of the State and are allowed.

Item 24—Aggregate, $18,574,747.84.

For the reasons heretofore given this item is allowed as an ordinary expense.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that the Commonwealth expended within the time prescribed for interest on its public debt the sum of $18,574,747.84.

HARPERS FERRY RAID.

The full amount of the expenditure for the Harpers Ferry Raid by the State of Virginia was the sum of $255,745.77. $3,982.12 should be credited to the expenditure for sundry returns, leaving the actual expenditure, $251,763.65. The question now to be determined is whether that is fairly within the scope of the term "ordinary expenses," as that term is used in the decree.

The Constitution of the United States recognizes the essential character of the militia (Con. Art. 1, sec. 8, part 15 and 16, Code of Va., 1860, p. 17). The Virginia Bill of Rights declares that a "well regulated militia * * * is the proper natural and safe defense of a free state." (Code Va., 1860, p. 34, sec. 13.) Virginia has had an active and expensive militia establishment since 1705 (do. 134 note). The Governor is authorized to "call forth the militia" when any

> "combination whether for dismembering the State or establishing in any part of it a separate government, or for any other purpose shall become so powerful as to obstruct in any part of this state the due execution of the laws thereof."
>
> (Code Va., 1860, page 118, sec. 2.)

Under the title head of "Public Defense" is found most extensive, detailed, and comprehensive statutory provisions providing for its organization, maintenance and control, occupying 45 pages of the statutes. (Code Va., 1860, page 134).

It provides for salaried officers (do. 142, sec. 27). For pay of certain officers (do. 148, sec. 8). For annual muster (do. 147, sec. 4); two trainings annually for "the officers of each County" (do. 147, sec. 4). For cavalry and artillery (do. page 151, sec. 11). "In case of any invasion or insurrection within the limits of any division * * * the commandant of such division" has power "to order out for the defense of the State the militia or any part thereof" (do. 161, sec. 1). "The officers and soldiers when called into the actual service of the State shall be entitled to the same camp equipage, pay, subsistence, forage and other emoluments to which similar officers and soldiers are entitled in the service of the United States." (do. page 164, sec. 14.)

The expense of this establishment was large, and the amount $1,030,594.11 is admitted to be an "ordinary expense."

It is clear that the militia is organized and maintained not for continuous active service but only that from time to time as occasion may require it may be called into "actual service." It is maintained for the express purpose of meeting exigencies the nature of which cannot be specifically foreseen. The possibility of the occurrence of the exigency is all that can justify the existence of the militia establishment. If the expense of maintaining the militia in order that a State may be prepared to meet the exigency when the occasion arises is an "ordinary expense," it is diffi-

cult to see why the expense involved in meeting the exigency itself, thus provided for, the accomplishing of the sole purpose of the militia, is not also within the fair scope of an "ordinary expense." It is a legitimate part of the whole expense of the militia establishment. Its expenses should be treated as a whole. That the appropriations were made "for the defense of the Commonwealth" has no significance as showing that they were unusual or extraordinary. This language was no doubt used, not for the purpose of indicating that the Harpers Ferry Raid was unusual or extraordinary and beyond the scope of the militia's duties, but for the purpose of referring the appropriation to that branch of the public service which the legislature had technically designated the "Public Defense." That the Harpers Ferry Raid was signalized by important and far reaching consequences without precedent in the history of the State, and impossible of duplication, does not differentiate it from other, and less significant exigencies, that may have occurred or that might be expected to occur. It is not the cause, but the result of the exigency, which obstructs "in any part of this State the due execution of the laws thereof," and that "renders it necessary to invoke the militia." The Harpers Ferry Raid, was then, an exigency which might ordinarily occur, which was clearly within the contemplation of the legislature when it created and maintained the militia, one of the specific things for which the annual expenditures were made, and I think it is for these reasons, within the fair meaning of the decree an "ordinary expense," and the sum of $251,763.65 is therefore allowed as such.

Primary Schools.

The amount expended on account of primary schools was $3,056,239.84 (Rec. p. 538-H). Of this amount thus expended, the defendant admits that the sum of $655,908.73 stated by them as "paid from capitation tax" is an ordinary expense and should be so charged. They deny that the balance of $2,400,331.11 is so chargeable for the reason that it was derived from other sources than the capitation tax or "on account of the source from which it was derived" (Rec. p. 515-D-1, p. 1; 538 H. Deft.'s Ex. D-2, p. 7).

The "Literary Fund" from which these expenditures were made came from three sources; First,

> "all money, stocks or other property which now or hereafter may belong to the Literary Fund" (App., p. 207);

Second,

> "Whatever shall accrue to the State from escheats, forfeitures or fines (except militia fines) from the estate of a decedent of which there is no other distributee or from any other property as derelict and having no other owner" (Code Va. 1849—App., p. 207).

Third, The auditor of public accounts was required by law to

> "set apart and pay into the Treasury to the credit of the Literary Fund for the purposes of education in primary and free schools, the *amount* of the capitation tax for the preceding year" (Act, March 25, 1853, App., p. 208).

From the fund thus created there was expended, $45,000.; $70,000., $75,000 and $80,000 annually (Code Va. 1860, pp. 416-7 note).

I have already held, under a preceding paragraph, that an expenditure for this purpose was an ordinary expense, and not an "expenditure." It is conceded that as to $655,908.73, that conclusion is correct, because it was "paid from the capitation tax."

I find nothing in the legislation or in the decree that sustains this distinction. The sum of $655,908.73 was not "paid from the capitation tax." Under the express provision of the Statute, the capitation tax was paid "into the Treasury to the credit of the Literary Fund", and when it arrived in the Treasury it was mingled with all the other funds that were the property of the "Literary Fund." It is only the *amount* of the capitation tax that is paid out of the Treasury for the purposes of education. There are no earmarks upon the capitation tax by which it can be traced into the Treasury, and then out of the Treasury, as a disbursement for educational purposes. The provision as to the capitation tax is not an appropriation of the tax *per se*, but is simply a provision on the part of the state determining the minimum amount that shall be contributed annually from the revenues raised by taxation to the Literary Fund, to supplement the first and second sources of income. The amount to be spent "for the purpose of education" was by no means limited to the "amount of the capitation tax." It exceeded it by the amount of $2,400,331.11. These three sources of income when they reached the Treasury constituted a common fund known as the "Literary Fund." Out of

that common fund all of the disbursements were made for the purposes of education. The decree does not authorize me to inquire into the source from which the money reached the Treasury, and determine the amount of the ordinary expenses expended from this fund, by the amount of any particular source from which the fund derived its revenue. If one dollar expended for primary schools from the "Literary Fund" made up from these various contributions, is an ordinary expense, I can see no reason why every dollar coming from the same fund, and expended for the same purpose, is not also an "ordinary expense."

I therefore find that the sum of $3,056,239.84 is an ordinary expense. Inasmuch as the sum of $655,908.73 has already been included among the items which make up $18,207,684.29, there is to be added to it in order to charge $3,056,239.84 as an ordinary expense the difference between that sum and $655,908.73 or $2,400,331.11.

Alternative Finding.

I find, at the request of the defendant, as an alternative finding, that the amount of the capitation tax during the period in which the sum of $3,056,239.84 was expended for schools was $655,908.73.

Surveys.

I have already held under Paragraph III, that the sum of $106,983.67 expended for surveys by the Board of Public Works was general in its character, and should be charged as an ordinary expense and the item is here so charged $106,983.67.

SUMMARY ORDINARY EXPENSES.

	The amount agreed upon between the parties, is.....	$18,207,684.29
1.	Tobacco receipts.....	$353,123.96
3.	Slaves transported and executed.....	$311,168.35
5.	Maps, Board of Public Works	$11,446.48
7.	International Exchanges....	$2,836.19
9.	Printing Treasury Notes....	$375.74
13.	Improvements in public square	$1,456.91
14.	Fugitive slave expense; reward additional.....	$2,201.00
16.	Calling out militia at Wheeling, in 1836.....	$1,099.00
18.	Atty.-Genl.'s fees prosecuting Selden, Withers & Co. claim	$500.00
19.	Remodelling and repairing old building of Eastern Asylum.....	$5,000.00
	Support Western Asylum..	$7,450.01
23.	Sundry Board of Public Works expenses.....	$36,728.50
24.	Interest on public debt.....	$18,574,747.84
	Expenses of Harper's Ferry Raid.....	$251,763.65
	Expended for primary schools.....	$2,400,331.11
	General expenses connected with surveys	$106,983.67
		$40,274,896.70

SUMMARY ALTERNATIVE FINDINGS.

1. At the request of the defendant, that the Commonwealth received from Tobacco Receipts.....	$353,123.96
2. At the request of the plaintiff, that the Commonwealth expended for two Constitutional Conventions, held in 1829 and 1850	$258,906.28
4. At the request of the plaintiff, that under the acts of the legislature above referred to, the Commonwealth expended in running boundary lines.....	$16,704.78
5. At the request of the plaintiff, that the Commonwealth expended under acts of the legislature for maps	$16,628.04
6. At the request of the plaintiff, that the Commonwealth expended in original construction and other additions to or increase of the plant of the Deaf, Dumb and Blind Institution, the details of which are on pp. 5, 6 and 7 of Joint Ex. D-1....	$80,661.94
8. At the request of the plaintiff, that the Commonwealth overpaid on Treasury notes.....	$50.00
At the request of the plaintiff that the Commonwealth lost on account of counterfeit money.	$190.00

11. At the request of the plaintiff, that the Commonwealth expended in the erection of buildings and additions thereto and installation of heating and lighting plants connected with the Va. Military Institute..... $151,000.00

12. At the request of the plaintiff, that the Commonwealth expended in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation" of buildings &c. of the University of Virginia..... $25,000.00

13. At the request of the plaintiff, that the Commonwealth expended for Improvements to Capitol Square, the sum of..... $12,278.47

15. At the request of the plaintiff that the Commonwealth expended on additions to Penitentiary lot, New Hospital, Buildings etc. $13,947.48

17. At the request of the plaintiff, that the Commonwealth expended for "enlarging the hospital and infirmary and extending the college buildings, and for improvement and extension of the College museum" of the Medical College of Virginia... $25,000.

19. At the request of the plaintiff, that the Commonwealth expended on the Eastern & Western Asylums for items appearing on pages 531 to 538 incl.—Joint Ex. D-1, pp. 15 to 22 incl..... $331,845.56

20. At the request of the plaintiff, that the Commonwealth expended for Gun House at Alexandria $900.00

21. At the request of the plaintiff, that the Commonwealth expended for Cannon House, Surrey County $110.00

22. At the request of the plaintiff, that the Commonwealth expended for Cannon House for Richmond Artillery $1,079.09

23. At the request of defendant, that the Commonwealth expended for expenses of the B. P. W. $36,728.50

24. At the request of the defendant, that the Commonwealth expend- for interest on its public $18,574,747.84

the alternative at the request of the hat the amount of the ordinary ex- and the apportionment thereof, accord- the claims of the plaintiff, are correctly stated on pages 515 and 516 of the Record.

Division of Ordinary Expenses of Government by Decades.

	Total.	1st decade ending Sept. 30th, 1830.	2d decade ending Sept. 30th, 1840.	3d decade ending Sept. 30th, 1850.	4th decade ending Dec. 31st, 1860.
Agreed Amount	$18,207,684.29	$2,902,808.21	$3,975,260.33	$4,514,861.97	$6,158,845.05 655,908.73
Schools	2,400,331.11	330,054.08	568,328.36	715,190.24	786,758.43
Tobacco Receipts	353,123.96	71,950.84	50,246.78	62,703.07	168,223.27
Slaves Transported and Executed	311,168.35	41,491.54	53,488.95	49,497.28	166,690.58
Maps (Board of Public Works)	11,446.48	4,428.79	.....	1,500.	5,517.69
International Exchanges	2,836.19	.....	.....	550.	2,286.19
Printing Treasury Notes	375.74	.....	.....	.....	375.74
Improvements to Public Square	1,456.91	1,456.91	.....	.....	.....
Fugitive Slave Expense	2,201.	.....	.....	.....	2,201.
Militia—Wheeling, 1838	1,099.	.....	1,099.	.....	.....
Attorney General's Fees	500.	.....	.....	.....	500.
Eastern Lunatic Asylum—Repairs	5,000.	.....	.....	5,000.	.....
Western Lunatic Asylum—Support	7,450.01	.....	7,450.01	.....	.....
Board of Public Works—Expense	36,728.50	64.50	1,579.87	1,698.92	33,385.21
Interest on the Public Debt	18,574,747.84	274,278.17	1,146,146.43	3,682,978.86	13,471,344.38
Harpers Ferry Raid	251,763.65	.....	.....	.....	251,763.65
Surveys	106,983.67	42,046.76	49,450.09	14,818.09	668.73
	$40,274,896.70	$3,668,579.80	$5,853,049.82	$9,048,798.43	$21,704,468.65

Division of Ordinary Expenses of Government by Plaintiff's Method as Shown in Joint Exhibit D-1, Pages 2-3.

ORDINARY EXPENSES DIVIDED BY DECADES.

Mar. 19, 1823, to Sept. 30, 1830	$3,668,579.80
Oct. 1, 1830, to Sept. 30, 1840	5,853,049.82
Oct. 1, 1840, to Sept. 30, 1850	9,048,798.43
Oct. 1, 1850, to Dec. 31, 1860	21,704,468.65
	$40,274,896.70

DIVIDED ON BASIS OF AVERAGE TOTAL POPULATION *INCLUDING* SLAVES.

1st Decade—Virginia	85.9789%	$3,154,204.56		
West Virginia	14.0211%		$514,375.24	
2d Decade—Virginia	83.6218%	4,894,425.61		
West Virginia	16.3782%		958,624.21	
3d Decade—Virginia	80.2045%	7,257,543.54		
West Virginia	19.7955%		1,791,254.89	
4th Decade—Virginia	77.5014%	16,821,267.07		
West Virginia	22.4986%		4,883,201.58	
Total Virginia		$32,127,440.78		
Total West Virginia			8,147,455.92	
Grand Total as above				$40,274,896.70

DIVIDED ON BASIS OF AVERAGE TOTAL POPULATION *EXCLUDING* SLAVES.

1st Decade—Virginia	79.3334%	$2,910,409.09		
West Virginia	20.6666%		758,170.71	
2d Decade—Virginia	76.1625%	4,457,829.07		
West Virginia	23.8375%		1,395,220.75	
3d Decade—Virginia	71.9611%	6,511,614.89		
West Virginia	28.0389%		2,537,183.54	
4th Decade—Virginia	68.8438%	14,942,180.99		
West Virginia	31.1562%		6,762,287.66	
Total Virginia		28,822,034.04		
Total West Virginia			11,452,862.66	
Grand Total as above				$40,274,896.70

Division of Ordinary Expenses of Government by Defendant's Method as Shown in Joint Exhibit D-1, Page 4.

Total Ordinary Expenses to be divided	$40,274,896.70

DIVIDED ON BASIS OF TOTAL AVERAGE POPULATION *WITH* SLAVES.

Virginia	81.3718%	$32,772,408.39
West Virginia.....	18.6282%	7,502,488.31

DIVIDED ON BASIS OF TOTAL AVERAGE POPULATION *WITHOUT* SLAVES.

Virginia	73.3369%	$29,536,360.72
West Virginia.....	26.6631%	10,738,535.98

I find that the method adopted by the plaintiff of, ascertaining "the average total population", is the closest and most accurate approximation upon which the ordinary expenses can be apportioned to "the average total population", as the object to be ascertained, is the population in existence, at the time the ordinary expenses to be apportioned, were paid, and I therefore adopt the plaintiff's method.

PARAGRAPH V OF DECREE.

5. "AND ALSO ON THE BASIS OF THE FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES, OF THE STATE OF VIRGINIA."

This paragraph is clearly in the alternative with the last clause of Paragraph IV. That paragraph requires "such proportion of the ordinary expenses * * * on the basis of the total average population," and Paragraph V. "*also* on the basis of the fair estimated valuation," two alternatives, each predicated upon the same "ordinary expenses." How any proportion of the ordinary expenses can be predicated upon a valuation that is not coterminous with the "ordinary expenses", but taken two and a half years later under a profound change in conditions, affecting the amount of that valuation, can serve any useful purpose in apportioning such "ordinary expenses" it is difficult to see. If an ordinary expense is a charge upon valuation, it can only be a charge upon the valuation in existence at the time the "ordinary expense" is incurred, and not upon another and entirely different valuation at a later period. The case has, however, been tried upon the hypothesis that the "fair estimated valuation," is as of June 20, 1863, and while I think January 1, 1861 is the true date, I will first find the fair estimated valuation on June 20, 1863. Both parties start with the assessed valuation of real estate made in 1856, and which it was provided by Acts passed March 27, 1862 and March 28, 1863 "shall be permanent and not be changed" for those years respectively (App. p. 133). The taxes were assessed as of February 1

(Code of Va. 1860, p. 197, sec. 48) (Acts Genl. Assembly, 1863, Chap. 1, p. 1). The rate of assessment in '61 (See Plff. Ex. H-1) was at the rate of forty cents on a hundred. The Act of 1863 increased the rate of taxation to 100 cents on a hundred and generally, one hundred and fifty per cent. The Act of 1862 contained no provisions as to changing the assessment of real estate. The Act of 1863, sec. 91, provided that

> "as many tracts of land and lots with improvements thereon situate in counties invaded by the public enemy have been permanently diminished in value by said invasion and despoiled and reduced in value by military occupation and by the waste and violence incident to war, it shall be the duty of the Commissioners of the Revenue for such counties upon the requisition of the owner of any real property situate in such counties or of his agent to make a new assessment of such real property upon the following basis and mode of valuation, viz.: The commissioner shall deduct from the amount at which such property stands assessed at its last assessment such sum as is equal to a fair estimate of the permanent diminution in the value thereof caused by the invasion of such county and of the permanent injury and damage inflicted upon such property by military occupation thereof and the waste and violence incident to war" (App. pp. 133-4).

and then follows a provision that the

> "permanent diminution, injury and damage"

should be measured by the "standard and rate of valuation" as if it had "been estimated during the year 1856," the remainder to be the valua-

tion to be assessed. The change of valuation could be made only "upon the requisition of the owner." The defendant claims that it is to be presumed that the owner made the application where there was any diminution in value for that cause and that as to the counties actually subjected to "military occupation" the presumption is that the assessors valuation for 1863 represents the actual value after these proceedings had been had. The law provided also for adding to or taking from the assessment on the addition or loss of buildings (Code of Va. 1860, chap. 35, secs. 31, 32, 33 & 34, pp. 193-4). Nothing appeared in the case to indicate that any requsitions had been made by owners for a reduction in value under the provisions of Sec. 91. If there is a presumption that the requisitions were made and the values were correspondingly reduced under the provisions of this section, that presumption is overcome by the fact that the valuation of real estate for 1863, was $378,534,712.35 (Rec. p. 639—Ex. E-1, p. 1) as against a valuation for 1861 $317,330,219.26 (Plffs. Ex. H-1, p. 647), and valuation for 1860 of, $377,947,112 (do.).

It will be seen that the valuations for 1863 and 1860 are substantially the same. While the valuation for '63 exceeds that given for 1861, it should be noted that quite a number of counties were omitted in 1861 which were valued in 1863 at about $36,000,000, which added to $317,330,229.26 would make an aggregate of $353,330,229.36, so that the valuation of real estate in 1863 instead of being reduced as it inevitably would have been if there had been any diminution on the requisition of the owners, shows substantially the same value as in 1860 and an increase over 1861.

The assessments as stated in the schedules for Virginia and West Virginia stand therefore unaffected by any of the considerations growing out of the war conditions on June 20, 1863, and are practically the assessments of 1856.

The plaintiff claims that because of the fact that the real estate was within the limits of the Confederacy, whose territory was to a large extent the theatre of active war, occupied by contending armies, had been ravaged and in part destroyed, with agriculture and manufactures practically paralyzed, there was a depreciation of its value by at least fifty per cent in all of Virginia and the same in the counties of Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas in West Virginia (Rec., p. 640, Ex. E-1, p. 2).

If this contention is sustained the "fair estimated valuation of the real property of Virginia" would be $148,042,730.15; and in West Virginia, $67,676,127.44. To establish this, they rely upon the general presumption that a marked decrease in value would result from the war conditions, the opinions of witnesses and the sale of different parcels of real estate.

My attention has been called to cases tending to show that the assessments are admissible as tending to show the value of real and personal property at the time of the assessment. Inasmuch as each party relies upon the assessment as the basis of their respective valuations, and there is no other evidence in the case, and no other is probably obtainable, that tends to show the value of the real and personal property as a whole at the time in question, I shall treat the assessments

as one of the competent elements for the purpose of determining the fair estimated valuation.

The defendant contends that Virginia is estopped from denying that the assessed valuation in 1863 is the "fair estimated valuation" and rely upon *State* v. *Turpike Co.*, 22 Tenn. (3 Humphrey), 305, and *State* v. *Hamilton*, 30 Tenn. (11 Humphrey), 47, which hold that the analogy between the agent of the state employed to "transact its ordinary business and operations" is complete between that of an agent of an individual person, acting through his agent, and the state is equally bound thereby. *State* v. *Crutcher*, 32 Tenn., 504, 515, is to the same effect except as an additional reason for holding that the settlement involved in that case bound the state, it appeared that it had "received the approval of the legislature."

As to these cases it is to be said that the assessors assessing property are not acting as agents of that character. As is said in *Stanley* v. *Board of Supervisors*, 121 U. S., 535, also cited by the defendant, "their action is judicial in its character."

11 Amer. & Eng. Ency. of Law, 2nd Ed., 396, and cases cited, is relied upon as establishing the doctrine that a state may be estopped by its covenants in a deed.

The cases all proceed upon the theory that as to the deed or grant, the state acts in its private capacity, and is therefore governed by the same rules that apply under the same circumstances to private individuals, a state of facts that does not obtain at bar, as there is no deed or grant here, and there is no action by the

state in its private character and no ground for an estoppel. Cases like *Stanley* v. *Board of Supervisors*, 121 U. S. 535, are cited for the purpose of showing that the assessment cannot be attacked collaterally by a tax payer, but this is not a case of a tax payer contesting either the validity or the amount of the tax assessed, and those cases proceed upon the ground that remedies are provided by statute for the tax payers. Moreover, in that case the Court held that the valuation fixed, was not conclusive even as against the tax payer, as while they hold that the tax could not be attacked collaterally, they also hold that

> "when the over-valuation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a Court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due" (pp. 550-1).

While insisting upon the position that the assessed valuation is conclusive upon Virginia, defendant calls my attention to cases, which it is contended, require me to take judicial notice that these valuations "are far below the market value of the property assessed".

In *State* v. *Savage*, 91 N. W. 716, 720, acting upon an assessment, the Court took judicial notice that it was "notorious" that the assessment was at only twenty to ten per cent of the value of the property.

In *Railroad & Tel. Cos.* v. *Board of Equalizers,* 85 F. R. 302, the Court said, if it "may judicially know an established custom" real property was assessed "at a rate not exceeding 75 per cent. of actual value" (p. 310). And the Court also said:

> "It is a matter of familiar and common knowledge with every citizen of the State [Tennessee] that ordinary real property is assessed for general taxation at a percentage ranging from 50 to 75 per cent. of actual value" (p. 308).

The Court cited *Railway* v. *Guenther,* 19 F. R. 395 where in speaking on the same subject, the Court said:

> "But from the other proof in the cause and from what the Court may judicially know"

the assessments were

> "one-fourth below their real value " (p. 399).

The Court in that case also cited *Board of Supervisors of Bureau County* v. *Chicago B. & Q. R. Co.,* 44 Ill. 229 where the Court said:

> "It is an admitted fact on both sides of this controversy that the property of no one owner in the County of Bureau has been taxed on its real value" (p. 239).

In that case it appeared that

> "property of individuals ranged from one-fifth to one-third of its cash value" (p. 237).

These facts appeared by proof and were not a matter of judicial notice.

In *Cummings* v. *National Bank*, 101 U. S. 153, also cited in the opinion, the Court said:

> "But it is a matter of common observation that in the valuation of real estate this rule is habitually disregarded" (p. 162).

The Court had already decided the case and it appeared "by the testimony of four or five assessors" that they had established a rule by which real and personal property was assessed at one-third of its actual value. The remark made by the Court was unnecessary to the decision, general in its character and expressly declared to be in "extenuation" of the practice thus disclosed to obtain in Ohio. The Court further said for the same purpose,

> "it is believed that the valuation of real estate for the purposes of taxation rarely exceeds half of its current salable value" (p. 163).

It is not believed that the Court in using this general language by way of illustration, as a dictum, were laying down a legal rule for determining the value of real estate, and authorizing the Court by judicial notice to make a reduction from its assessed value.

These cases may perhaps be sustained upon the theory that

> "Courts may properly take judicial notice of facts that may be regarded as forming part of the common knowledge of every person of ordinary understanding and intelligence" (Cyc., Vol. 16, p. 852),

and the fact that the judicial notice is confined to the particular states under discussion.

I am not advised whether it is ten, twenty, thirty-three and a third, fifty or seventy-five per cent. of the valuation that I am expected to assume as a matter of judicial knowledge. If I am asked to hold that there is a universal custom, prevailing everywhere, to undervalue real estate for the purpose of taxation, I should not feel at liberty to so hold, for I know the contrary to be true. I know localities where the full value is intended to be assessed. There is no evidence in this case by which it could be inferred that any custom to undervalue prevailed in Virginia in 1856 or in 1863. If an undervaluation was a part of the common knowledge of every person of ordinary understanding at that time, nothing appeared in the record to indicate it, and I do not feel at liberty to assume it. The Act under which the assessment was made required the assessors to "examine all the lands and the lots with the improvements thereon * * * ascertain and assess the actual value thereof" (Sec. 4, Act Mar. 10, 1856, p. 17). By Section 5, the Courts had the power to

> "reduce the same to what is in their opinion the true value of such lands or lots,"

and if too low, "they shall increase it in like manner".

The defendant contends in connection with these assessments that

> "It is a well settled principle that the law contemplates or presumes that all public officers in the discharge of their duties have acted according to the requirements of the law and have done all things which the law requires they shall do,"

and cites authorities which amply sustain that proposition. Such being the rule, when applied to this assessment it follows that in fixing the value of the real estate in 1856 the assessors fixed the "cash value thereof".

The defendants were requested to submit authorities upon the competency of the opinions of witnesses and actual sales upon the question of values on June 20, 1863. Having submitted none, I assume that they do not contend that upon the authorities evidence of that character is inadmissible. The evidence is objected to on the ground that its effect is to impeach the judgment of the revenue officers, and it is claimed that their judgment is thus being collaterally attacked. No question of taxation is involved here. The only question is what is a "fair valuation", and an assessment made in 1856 is the starting point in ascertaining that valuation on June 20, 1863.

The theory of the plaintiff involves the assumption that the assessment in 1856 was the true value at that time. It is their basis. That pronounced changes in value, especially in view of war conditions, may have occurred up to June 20, 1863, is too obvious for discussion.

The opinions of witnesses, sales, and conditions in 1863, and the use sought to be made of such evidence on the part of the plaintiff does not only fail to contradict, impeach or collaterally attack, but proceeds upon the assumption, that the action of the assessors is to stand, as the basis of the valuation.

It seems inevitable, that the existence of the war and its continuance from 1861 to June 20, 1863, the presence of the contending armies and the condi-

tion of destruction and devastation necessarily incident thereto, produced a marked diminution in the value of the real estate within the limits of the Confederacy.

The difficult question is, how much was the depreciation. Upon this point the evidence is very fragmentary, indefinite and unsatisfactory, but it is all there is in the case from which that can be ascertained. The plaintiff shows thirty sales of real estate in the territory in question during the months of April, June, July and August, 1863 (Rec. 654-5-6-7-8). These sales were all undoubtedly in Confederate money, as it does not appear to be seriously controverted that all transactions in the Confederacy at that time were in Confederate money. Reduced to a gold basis they show an average depreciation from the assessed value of 62.90 per cent.

J. M. McWhorter, a witness for the defendant says that "there was depreciation. People were ready to dispose of their property and turn it into money" (Rec., p. 715). It was on account of the raids of Confederate armies (Rec., pp. 715-716). He testifies only as to Roane and Jackson Counties (Rec., p. 717) and makes no estimate as to the amount of the depreciation in those Counties.

Ex-Governor Atkinson, also a witness for defendant, was in Kanawha, Fayette, Nicholas, Greenbrier, Jackson, Roane, Putnam and Mason counties, more or less of which, were overrun at times by both armies (Rec., p. 787). He says

> "It necessarily materially reduced the values of all kinds of property all through this region of the country" (Rec., p. 788).

From shortly after September, 1862, until the close of the war the Federal forces occupied the great Kanawha valley (Rec., pp. 787 and 790). The counties above referred to were largely situated in this valley. He had no doubt but that

> "property values did increase in the upper part of the State to some extent during the period of the War, which part was not burdened by soldiers of either side; but for the Southern portion of the State, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all" (Rec., pp. 794-5).

He says "that in the whole Southern tier of counties" real estate "did materially depreciate" (Rec., p. 795). He expresses no opinion as to the percentage of increase on the one hand or decrease on the other.

The counties that plaintiff concedes should have their values reduced are the whole Southern tier of Counties (Rec., p. 640, Ex. E-1, p. 2) and the counties as to which Mr. McWhorter and Mr. Atkinson testify are such as were substantially in the great Kanawha Valley that was under Federal control shortly after September, 1862, until the close of the War.

This is in substance the evidence upon the part of the defendant bearing directly upon the question of value.

The plaintiff relies upon a number of witnesses who appear to have had some opportunity to know of the conditions in a great deal of the territory in Virginia that was the subject of military occupation. They all agree that great damage was done and that there was great deterioration in value. (Hunter, 741; Scott, 748; Branch, 754;

Wellford, 761; Taylor, 769; Hawes, 772; Williams, 778; McCabe, 783-4).

Hunter says that it:

> "is almost entirely a matter of conjecture, but I should suppose it would be fair —of course I just hazard this—to state that the values were destroyed one-half at least, taking the whole State at large" (Rec., p. 742).

He says it was "impossible to base any satisfactory judgment as to values" (Rec., p. 742). In answer to the question as to whether real estate was worth "less than one-half," Scott says, "Undoubtedly in gold values" (Rec., p. 748).

Branch says:

> "I don't consider that I know enough to express an opinion in regard to real estate. It was very much depreciated * * * I am satisfied (though I am not speaking of any sale I now remember) that it depreciated fully one-half" (Rec., pp. 756-7).

Wellford—reducing Confederate money to gold, says the value was not "over one-half" as before the War (Rec., p. 763).

Taylor—Fifty to Sixty per cent. depreciation (Rec., p. 770).

Hawes—Depreciation, fifty per cent. (Rec., p. p. 779).

Williams—Average lands in Virginia were not worth 25 per cent. in 1863 in good money (Rec., 779).

McCabe expresses no opinion as to the amount of depreciation.

Indefinite, uncertain and unsatisfactory as these statements are, the defendants though examining its witnesses upon the same general subject after this testimony was taken, made no effort to contradict their statements or opinions. This, with the sales, is all the evidence there is, and it is perhaps true that at this late day, nothing more satisfactory could be obtained. Taking it with the presumption of the great decrease in value resulting from the War conditions, I think the estimate made by the plaintiff is as close and approximate as can be reasonably made of the fair estimated value of the real estate on the 20th day of June, 1863, and I therefore find that the fair estimated valuation of the real estate in the counties in Virginia on that day was, $148,042,730.15. The plaintiff concedes that the same reduction should be made in the Southern tier of ten counties of West Virginia. I find the value of the real estate in said counties to be $14,773,124.60.

There is no evidence that taking West Virginia as a whole there was any decrease in its value. While Ex-Governor Atkinson says, that in the upper part of the State "values had increased to some extent," and that

> "but for the Southern portion of the State, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all. On the contrary, I am quite confident that it did not do so" (Rec., p. 795),

he afterwards said that in the southern tier of counties it materially depreciated. He expresses no opinion upon the question of depreciation of the state as a whole. His statement as to the in-

crease of value of the upper part of the State has some corroboration in the fact that agriculture was carried on in that section at a handsome profit in 1863 and 1864 (Rec., p. 798).

The same reduction having been made in the Southern tier of ten counties on account of the War conditions that has been made upon the real estate in Virginia, I think it reasonable to take the assessed valuation in West Virginia for the remaining counties without making any addition for any increase in value "in the upper part of the State" as the fair estimated value of the real estate in those counties on June 20, 1863.

And I therefore find that the fair estimated value of that portion of West Virginia was $52,903,002.84, which added to the valuations fixed upon the Southern tier of counties makes the aggregate of the fair estimated value of the real estate in the Counties of West Virginia the sum of, $67,676,127.44.

Alternative Finding.

I find in the alternative at the request of the defendant that the assessed valuation of the real estate in the counties constituting the State of Virginia on June 20, 1863, was $296,085,460.31 and that the assessed valuation of the real estate in the counties constituting West Virginia was $82,449,252.04.

Personal Property.

The total valuation of personal property including slaves and not including income in the counties of Virginia, was, according to the last obtainable assessment prior to June 20, 1863

(Rec., p. 639, Ex. E-1, p. 1), $403,696,228.59. The same valuation for the counties in West Virginia was $30,394,487.21 (do.).

The witnesses all agree that there was a great diminution in quantity of stock of all kinds and provisions as compared with 1860 and 1861.

Hunter says: "Very largely; very largely" (Rec., p. 743).

> Scott says: "Personal property of all sorts had become so scarce that by reason of its scarcity it had a fictitious value, almost in Confederate money. There were not any horses to spare left, very few cows, very little furniture, very few farming utensils and very little live stock."
>
> "There was ten times as much personal property in 1861 as there was in 1863" (Rec., p. 749).

The value of horses was much more in 1863 (Rec., p. 750).

Branch says: other personal property had depreciated fifty per cent. (Rec., p. 757).

Wellford: "Immense diminution in the quantity" of personal property (Rec., p. 763). Hogs made into bacon, and horses, were worth more. He says that Lincoln's Proclamation had "very little effect" upon the value of slaves "until the surrender of Vicksburg and Gettysburg. It was laughed at and ridiculed by most people" (do., p. 763). Leaving out cotton and tobacco, personal property depreciated 75 per cent. Carriages and wagons and farming utensils were pretty well worn out (do., p. 764). Nearly one-half of the horses and cattle were gone (do., p. 765).

Taylor—Depreciation 50 to 75 per cent. (do., p. 769) "except such things as were absolutely in

demand like horses, provisions and things that you would have to have'' (do., p. 769).

Hawes—Live stock and poultry were swept off. (do., p. 772). Amount carried off large (do., p. 774).

Williams—Depreciation was less than fifty per cent. (do., p. 779).

McCabe—Live stock was swept away (do., p. 785).

While these statements as to the amount of personal property destroyed are probably somewhat exaggerated I have no doubt there was a marked reduction in quantity, and an abnormal increase in demand, caused by the presence of the contending armies in large numbers for such personal property as horses, cattle, sheep and hogs which would necessarily tend to largely increase their value. All fowl and animals of every description (except horses, mules, asses, cattle, sheep and hogs), all farming implements actually used for farming purposes and all mechanics' tools used on any farm or by any person actually engaged in any other occupation or profession were exempt from taxation, and are not included in the aggregate of personal property above given.

The plaintiff claims that the assessment upon which the valuation of personal property is based was made in Confederate money on February 1, 1863, which at that date was at the rate of 4 to 1, and that therefore in order to get the valuation in gold the assessment should be reduced seventy-

five per cent. An analysis and comparison of the assessments of 1861 and 1863 does not sustain this contention. For the purpose of making this analysis and comparison I have had prepared an abstract of the personal property assessment for 1863, so far as obtainable from the records, marked "Supplemental Ex. 4", and a comparison of average assessed valuations marked "Supplemental Ex. 5." If the assessment of 1863 was made upon the same basis as the assessment of 1861 and there was an increase in the value of horses &c., cattle, sheep and hogs, we should expect to find in the assessment of 1863, a larger average sum assessed on account of such property than was assessed in 1861. If a basis of valuation four times as great as that of 1863 was adopted, we should expect to find a general increase in the value as to all the items included in the assessments, approximating at least, the basis used. In the case of pleasure carriages and other vehicles, the assessment of 1863 compared with 1861 in six instances at least is less than the assessment of 1861. In case of watches, it was less in two counties, and in case of clocks in ten counties. In the case of pianos and harps, in 19 counties.

In making these comparisons it is to be noted that the valuations in 1861 as a rule are somewhat less than the valuations in 1860. I have not made computations in connection with all of the items in all of the counties, but I have made computations enough to satisfy me that there has been no horizontal increase of the rate of assessment on the basis of four to one.

The largest increase was in connection with the items as to which the greater increase in value was to be expected. In the case of sheep, the

greatest increase that I find is 450 per cent. and I find that in only twenty-four counties was there an increase of 300 per cent. or over. In cattle, the largest increase I find is 321 per cent, and I find only three counties in which there was an increase of 300 per cent. or over. The largest increase in the case of hogs was 461 per cent. and I find only nine counties in which there was an increase of 300 per cent. or over. I find that in one county there was an increase in the valuation of clocks of 332 per cent.

The assessment of the various articles of personal property in a number of counties will show that nothing approximating a horizontal increase could have been made in 1863. I have selected for comparison the following counties, as they show some of the largest increases in valuation and are more favorable to the plaintiff's contention. In Amherst County the increase on horses &c. was 136 per cent.; pleasure carriages, 46 per cent.; cattle, 221 per cent.; sheep 400 per cent.; hogs, 347 per cent.; watches, 99 per cent.; clocks, 16 per cent.; pianos and harps, 43 per cent. Fluvanna County, horses 122 per cent.; pleasure carriages, 54 per cent. cattle 257 per cent. sheep 300 per cent. hogs, 300 per cent. watches 55 per cent. clocks 29 per cent. pianos and harps 55 per cent.

Henrico County—Horses, 79 per cent.; pleasure carriages, 51 per cent.; cattle, 316 per cent.; sheep, 358 per cent.; hogs, 479 per cent.; watches, 58 per cent.; clocks, 63 per cent.; pianos and harps, 40 per cent.;

Goochland County—Horses, etc., 105 per cent.; pleasure carriages, 7 per cent.; cattle, 266 per cent.; sheep, 335 per cent.; hogs, 304 per cent.;

watches, 56 per cent.; clocks, 7 per cent.; pianos and harps, 10 per cent.;

Powhatan County—Horses, etc., 83 per cent.; pleasure carriages, 28 per cent.; cattle, 257 per cent.; sheep, 440 per cent.; hogs, 338 per cent.; watches, 37 per cent.; clocks, 86 per cent.; pianos and harps, 17 per cent.

The average increase per head of these various items of personal property in 1863, compared with 1861, is: Horses, 93 per cent.; pleasure carriages, 30 per cent.; cattle, 140 per cent.; sheep, 228 per cent.; hogs, 164 per cent.; watches, 58 per cent.; clocks, 34 per cent.; pianos and harps, 25 per cent.

Plaintiff says that the counties of Accomac, Alexandria, Northampton, Norfolk City, Norfolk, and Portsmouth "are included in the comparison" and that the assessment in those counties was made "at its full value in lawful money of the United States, and not in Confederate currency." Inasmuch as the schedule shows no assessment in Alexandia in 1861, none in Norfolk for 1863, none in Norfolk City for 1861 and 1863, and none in Portsmouth for 1863, those counties, standing alone, would not appear to have much value. Alexandria comes nearest to the other counties in amounts assessed and a comparison with its values will show that there could have been no general increase of assessments on the basis of 4 to 1. There are sixteen counties where the value of horses was less than $100 and three less than $81.01, the value in Alexandria; viz., Carroll, $72.43; Highland, $45.62, and Northumberland, $79.82. Horses—Alexandria, $81.01; average for State, $125.25; Amherst, $152.49; Fluvanna, $155.67; Goochland, $171.69; Henrico, $146; Powhatan, $139.06. Carriages—Alexandria, $103.28;

average in State, $90.28; Amherst, $116.68; Fluvanna, $110.31; Goochland, $91.60; Henrico, $114.12; Powhatan, $88.93. Cattle—Alexandria, $29.50; average in State, $24.28; Amherst, $34.89; Fluvanna, $41.72; Goochland, $44.16; Henrico, $71.67; Powhatan, $33.03. Hogs—Alexandria, $5.00; average in State, $5.26; Amherst, $8.77; Fluvanna, $8.47; Goochland, $9.62; Henrico, $23.16. Watches—Alexandria, $27.85; average in State, 51.41; Amherst, $85.07; Fluvanna, $53.67; Goochland, $59.08; Henrico, $62.81. Clocks—Alexandria, $3.87; average in State, $5.64; Amherst, $6.97; Fluvanna, $5.76; Goochland, $6.59; Henrico, $6.35. Pianos—Alexandria, $111.41; average in State, $182.46; Amherst, $215.59; Fluvanna, $237.20; Goochland, $205.96; Henrico, $181.05.

The marked increases that appear are clearly in connection with the articles that must have necessarily increased in value and very few of those show an increase of 300 per cent.

It is a fair inference from all the testimony that there was an actual increase in value upon the gold basis of horses, etc., cattle, sheep and hogs. The differences in value are what would naturally be expected from the difference in location and the fact that the values were fixed by different Commissioners. The analysis of the assessments distinctly negatives the idea that there was any change in basis of valuation. If Hawes, who says (Rec., p. 774) that horses would sell for $400, $1,000 and $1,500, and Williams: "A mighty poor horse you could get for $500" (do., p. 781) are correct, inasmuch as the average assessed value in 1863 for horses was $125.25, it is impossible that the assessment could have been made in Con-

federate money on the basis of their actual value. No one having any personal knowledge testified to the assessment having been made in Confederate money.

Plaintiff claims that Taylor and Williams testified that taxes "were assessed in Confederate money." Taylor testified:

> "Q. 11. In what kind of money were taxes assessed and paid at that time—in 1863? A. Confederate money" (Rec., p. 768).

Williams testified:

> "Q. 1. In 1863 what was the currency of the country here, the currency in which taxes were assessed and paid and transaction of all kinds had? A. The only currency in use was Confederate Treasury notes and State Bank notes."

and the rest of the answer makes no reference to the assessment.

> "Q. 2. What currency was the measure of value in 1863? A. Confederate currency. The bank notes were for a long time at a premium but they became finally as worthless as Confederate money" (Rec., p. 781).

He does not state when they were at a premium or when they became worthless. Neither of these witnesses were assessors and it does not appear that they had any personal knowledge, or how they derived such information as they have. It is not contended that real estate was assessed in Confederate money. The testimony of these witnesses covers all taxes and must be incorrect as to real estate. It may be it was intended to ask them as to personal property, but the question

was not so asked or answered. Is it true that all taxes were "paid" in Confederate money when the law in force shortly after the time of the assessment, Feb. 1, 1863 did not authorize the payment of taxes of less than five dollars in Confederate money?

I do not question the honesty or sincerity of the witnesses, but the judicial action of the assessors at the time would seem to be the better criterion of value.

The inference of assessment in Confederate money is sought to be drawn from the fact that the taxes were payable in Confederate money, and that business transactions were in Confederate money.

The Act of March 22, 1862 (Acts 1862, p. 32: App. p. 132), made Confederate notes receivable for taxes without any limit. The Act of March 28, 1863 (Acts of 1863, Chap. 1, Sec. 109: App. p. 132), made Confederate notes of the denomination of or over five dollars receivable for taxes, and the Act of Sept. 14, 1863 (Acts of 1863, Chap. 1, Sec. 1), made them receivable generally. An assessment in Confederate money (Feb. 1, 1863) as to those whose tax was less than $5.00 and could not be discharged in Confederate money would operate somewhat oppressively.

The act of March 28, 1863 raised the rate of taxation as compared with 1861 on the average, approximately, 150 per cent. The purposes for which the public expenditures were made were not increased; if anything, the purposes for which revenue was expended were less in 1863, than in 1861, as it is conceded that the discharge of many of the public functions which involved

expenditure by the Government at that time, were to quite a degree suspended. 150 per cent. more money was collected and disbursed to accomplish the same results that were accomplished in 1861.

The war expenses of Virginia it is conceded were met by loan. In the matter of taxation and the money collected therefor, the element of Confederate money was apparently reflected in the increase of 150 per cent. in the rate of taxation, rather than in the assessment.

The fact that personal property throughout the country generally very largely appreciated in value between 1861 and 1863 is of some significance. It seems clear that the basis of assessment was not Confederate money. Horses as an illustration were apparently assessed upon the same basis as in 1861 and at their fair value. If one item was assessed uon that basis, and upon its cash value, no reason is perceived why all of the other items of personal property, involved in the same assessment, were not made upon the same basis, and I see no reason why the rule does not apply to slaves, as well as to other personal property. While there are inconsistencies and incongruities in connection with these assessments which it is difficult to explain, I have to take this branch of the case upon the elements that I find, and I do not think the plaintiffs have sustained the burden of showing the horizontal decrease from the assessed value of 75 per cent. The only other alternative is the value fixed by the assessors on the basis of the assessment in 1861, and I therefore find that the assessed value of the personal property is the fair estimated valuation of the personal property on the 20th day of June, 1863, namely:

In Virginia $403,696,228.59
In West Virginia 30,394,487.21

(Rec., 639, Ex. E-1, p. 1.)

It appears that the amount of income upon which an income tax was assessed in Virginia, as per the latest obtainable assessment rolls, prior to June 20, 1863, was in Virginia. $11,108,300.13
and in West Virginia 299,257.45

The defendant claims that these sums are a part of the personal property and should be so returned. These sums represent "the value of his income during the next year preceding" the date upon which the assessment was made (Code Va. 1860, Sec. 151, p. 198), where it exceeds $250. It is gross, not net income. The fact that that amount was received in income during the preceding year, by no means indicates that it was on hand at the end of the year, especially where the tax was upon incomes as small as $250 a year. The inference is that it was not so on hand. So far as it was on hand unspent, it would necessarily be represented by "money on hand or securities or other personal property," which items have already been included in the aggregate of personal property above given. If the gross income was to be treated as personal property on hand, it would result in duplicating it in the aggregate of value so far as it was on hand. I disallow the "income" as part of the personal property June 20, 1863.

ALTERNATIVE FINDING.

I find at the request of the defendant that the amount of the income assessed for the year 1863 was for Virginia counties	$11,108,300.13
West Virginia counties	299,257.45

A fair estimated valuation of the property, real and personal, in Virginia counties, on January 1, 1861, I find to be as follows:

The parties agree that on that date, the fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia was at that time	$162,537,936
The fair estimated value of the other personal property in Virginia counties was	$102,114,863.

This sum is reached by taking the amount of the assessment for 1861 (Rec., p. 645), $100,201,850, and adding thereto the assessment for Chesterfield for 1861 (Plff. Ex. H1., p. 355), $1,077,368, and Goochland (Plff. Ex. H1., p. 395), $835,645, these two counties not being included in the Schedule (Rec., p. 645), as no original books were found showing those assessments.

Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30

And that the fair estimated valuation of such slaves at that time in the counties now constituting the State of West Virginia was	$6,319,624
Other personal property in West Virginia (Supplemental Ex. 6)	$23,469,172.
Real estate in West Virginia.....	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

SUMMARY.

June 20, 1863.	
Fair estimated value of real estate in Virginia counties....	$148,042,730.15
Fair estimated valuation of personal property including slaves in Virginia counties...	$403,696,228.59
Total real and personal in counties in Virginia including slaves..	$551,738,958.74
Fair estimated value of real estate in West Virginia counties	$67,676,127.44
Fair estimated valuation of personal property including slaves in West Virginia counties	$30,394,487.21
Total real and personal in counties in West Virginia, including slaves	$98,070,614.65

Fair estimated valuation of real estate in counties in Virginia	$148,042,730.15
Fair estimated valuation personal property in counties in Virginia without slaves	$152,844,637.59
Total real and personal in counties in Virginia without slaves	$300,887,367.74
Fair estimated valuation of real estate in counties in West Virginia	$67,676,127.44
Fair estimated valuation personal property in counties in West Virginia without slaves	$24,739,894.21
Total real and personal in counties in West Virginia without slaves	$92,416,021.65

ALTERNATIVE FINDING.

AT THE REQUEST OF DEFENDANT.

The assessed valuation of real estate in the counties of Virginia June 20, 1863 was	$296,085,460.31
The assessed valuation of real estate in the counties of West Virginia June 20, 1863 was . .	$82,449,252.04
Amount of income assessed in Virginia counties, 1863	$11,108,300.13
In West Virginia counties in 1863 .	299,257.45

Jan. 1, 1861.	
The fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia	$162,537,936.
Of the other personal property in Virginia counties was	$102,114,863.
Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30
The fair estimated valuation of slaves in the counties now constituting the State of West Virginia was	$6,319,624.
Other personal property in West Virginia (Supplemental Exh. 6)	$23,469,172.
Real estate in West Virginia	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses as found by me on the basis of values as claimed by plaintiff as shown in Joint Exhibit E-1, p. 2-a, excluding slaves is

Virginia,	$28,278,857.62
West Virginia,	$11,996,039.08

and on the same basis as shown in Joint Exhibit E-1, p. 3-a, including slaves,

Virginia, ...	$30,441,418.20
West Virginia, ...	$ 9,833,478.50

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses of the government as claimed by the plaintiff, on the basis of the values as claimed by the plaintiff, excluding slaves is as appears upon Joint Exhibit E-1, p. 2-a, and including slaves as appears upon Joint Exh. E-1, p. 3-a.

Fair Estimated Valuation—Virginia,
June 20, 1863:

Personal Property, *Including* Slaves.	$403,696,228.59	
Real Estate	148,042,730.15	
Total	$551,738,958.74	=84.9078%

Fair Estimated Valuation—West Virginia,
June 20, 1863:

Personal Property, *Including* Slaves.	$30,394,487.21	
Real Estate	67,676,127.44	
Total	$98,070,614.65	=15.0922%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	84.9078%	=$34,196,528.74
West Virginia	15.0922%	= 6,078,367.96

Fair Estimated Valuation—Virginia,
June 20, 1863:

Personal Property, *without* Slaves..	$152,844,637.59	
Real Estate	148,042,730.15	
Total	$300,887,367.74	=76.5026%

Fair Estimated Valuation—West Virginia,
June 20, 1863:

Personal Property, *without* Slaves..	$24,739,894.21	
Real Estate	67,676,127.44	
Total	$92,416,021.65	=23.4974%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	76.5026%	=$30,811,343.12
West Virginia	23.4974%	= 9,463,553.58

Fair Estimated Valuation—Virginia, Jan. 1, 1861:		
Slaves	$162,537,936.	
Other Personal Property	102,114,463.	
Real Estate	293,018,031.30	
Total	$557,670,430.30	=83.1029%
Fair Estimated Valuation—West Virginia, Jan. 1, 1861:		
Slaves	$6,319,624.	
Other Personal Property	23,469,172.	
Real Estate	83,600,730.55	
Total	$113,389,526.55	=16.8971%
Ordinary Expenses of Government..		$40,274,896.70
Divided on above basis:		
Virginia	83.1029%	=$33,469,607.13
West Virginia	16.8971%	= 6,805,289.57
Fair Estimated Valuation—Virginia, Jan. 1, 1861:		
Personal Property, *without* Slaves.	$102,114,463.	
Real Estate	293,018,031.30	
	$395,132,494.30	=78.6799%
Fair Estimated Valuation—West Virginia, Jan. 1, 1861:		
Personal Property *without* Slaves.	$23,469,172.	
Real Estate	83,600,730.55	
	$107,069,902.55	=21.3201%
Ordinary Expenses of Government..		$40,274,896.70
Divided on above basis:		
Virginia	78.6799%	=$31,688,248.45
West Virginia	21.3201%	= 8,586,648.25

Paragraph VI of Decree.

"6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

I think the moneys paid into the Treasury of the Commonwealth from the Counties included within the State of West Virginia are intended to be the converse or complement of the expenditures made by the Commonwealth of Virginia in the same territory. These were public expenditures for public purposes. The amounts paid in are also to be public payments in discharge of some tax or public burden, or sums paid by the public, for the use of a public utility owned by the state.

The parties agree upon the sum of $5,954,395.66 (Rec., p. 805; Ex. F-1, p. 1).

The following items are in controversy:

1. Bonus received from Banks.....$96,253.62

The details which are essential to the determination of this item do not appear in the Record. They are in "Supplemental Ex. 3," certified by both accountants. The first payment of $5,000 was paid in 1838. The Act of 1837, Chap. 82, p. 66, relative to Banks, provided as follows:

> "Sec. 7. That in consideration of the privileges hereby granted, there shall be paid to the Commonwealth, by every bank hereafter chartered, out of each semi-annual dividend, a sum equal to one fourth of one per centum upon the then capital stock, which shall be paid by creating additional stock to that

amount in the name of the Commonwealth, for the benefit of the fund for internal improvement."

This Act provided for a payment of a franchise or excise tax in stock. The item of $5,000 paid in 1838 appears to be in cash. There is nothing in the Record to indicate that it was stock paid under this statute. It is entered upon the books as a cash payment by the Bank. As no other explanation is given of the item, I will assume as a fair inference from the entry, that it was a tax paid in stock, and afterwards converted into cash to the amount of $5,000 and allow it upon that assumption as a payment.....$5,000

All of the other payments were made under an Act passed March 25, 1842 (Acts of Va., 1841-2, p. 61, Chap. 105, Sec. 14) which provided that in consideration of the privileges hereby granted that a sum equal to one-fourth of one per centum upon the capital stock "shall be paid semi-annually by the said banks into the Treasury of this commonwealth."

This was a general statute and the tax imposed was a franchise or excise tax of the same kind as those referred to in the Code of Virginia, Chap. 40, Sec. 41, p. 249, the chapter defining the "Amount or rate of tax." It is included among other subjects of taxation and is clearly treated in the general statutes as a tax and I hold that it is a franchise, or excise tax, and therefore properly to be credited under that paragraph $96,253.62

ALTERNATIVE FINDING.

At the request of the plaintiff, I find that the banks located in West Virginia paid into the

Treasury of the Commonwealth for the privilege of exercising their franchises during the period above mentioned and in the manner above indicated ..... $ 96,253.62

7. Dividends from Banks in West Virginia counties $786,666.98

These are not in any sense public payments. They are dividends which the State received on its own stock held in its private capacity, and are of the same character as the dividends paid to other stockholders. They are no more a public payment, or the discharge of a public burden, than are the dividends that are paid to the other stockholders. West Virginia is not charged with the investment, and no reason is perceived why she should receive a return upon a private investment which she refuses to assume.

The item is disallowed.

8. Dividends and interest from Turnpike Companies in West Virginia counties $13,595.48
9. Dividends from Bridge Companies in West Virginia $6,028.51
10. Dividends from Interstate Turnpike Companies (proportion).... $1,355.92

are of the same character and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that the aggregate of the last four mentioned items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth, in said companies, whose

banks and roads were located in West Virginia, with the exception of the dividends from Interstate Turnpike Companies (in which case the amount paid was in proportion to the portion of the road located in West Virginia), namely: $807,646.89.

11. Dividends from James River and Kanawha Company $352.21
14. Interest from the City of Wheeling $571.81

These items have both been withdrawn.

20. Merchants & Mechanics Bank Stock sold (bonus stock)..... $43,103.35

The Act incorporating the Merchants and Mechanics Bank (Acts of Virginia, 1833-4, Chap. 72, p. 84, Sec. 20), provided:

> "20. *And be it further enacted,* That in consideration of the privileges hereby granted to the said bank, there shall be paid to the commonwealth by the said bank, the sum of twenty-five thousand dollars, to be paid in twenty semi-annual instalments; which instalments when paid in shall be converted into stock, and a dividend thereon shall be declared from time to time, in the same manner as on shares held by individuals; the first instalment shall be paid one year after the first dividend be declared; *Provided,* That should the capital stock of said bank, at any time hereafter, be increased beyond the sum of three hundred thousand dollars, a similar bonus shall be paid on such increase, proportioned to the time for which this charter shall remain in force" (do. p. 92).

The Commonwealth received, under this section, from this bank 400 shares of stock which were

sold for $43,103.35 (Rec. p. 809). This was clearly a franchise or excise tax payable in stock instead of cash and is allowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth received from the Merchants and Mechanics' Bank "in consideration of the privileges" granted to it as a franchise tax 400 shares of stock which was sold for $43,103.35.

21. Northwestern Bank—Profit on 1,082 shares sold, $5,471.42.

This item has been withdrawn by the defendant.

22. Northwestern Turnpike Road tolls, $126,339.89.

The defendant is charged with the expenditure on this road, which was a public work, and the money that was paid into the Treasury in tolls by the public for the use of the road is the converse of the public expenditure made by the State and comes fairly within the meaning of the decree and is allowed so far as it exceeds the amount of tolls expended for repairs.

23. Staunton & Parkersburg Road tolls, $17,080.71 is also allowed for the same reason.

These tolls were used for making repairs on the respective roads, $109,587.74 in the case of the Northwestern Turnpike and $21,700.74 in the case of the Staunton and Parkersburg Turnpike, in all repairs, $131,288.48. (Rec., 373, Ex. C. 1, p. 2.) The aggregate of tolls received on both roads is $143,420.60, making, taking both roads together, a

net receipt of tolls, $12,132.12. The excess of tolls all occurs in the case of the Northwestern Turnpike and strictly speaking, the account should be stated, showing the excess of receipts in connection with that item, with an excess of charge for repairs in connection with the Staunton and Parkersburg Turnpike. Both roads in the discussion, however, have been taken together and the net result is precisely the same, and I therefore take the two items together and allow as a credit the net excess as above stated.....$12,132.12

ALTERNATIVE FINDING.

At the request of the plaintiff, I find that in the case of the last two items, the aggregate of $143,420.60 was paid into the Treasury of the Commonwealth as tolls upon roads owned wholly by the Commonwealth as the result of public expenditure the roads being public in their character and the tolls being paid by the public for the use thereof.

SUMMARY.

Money paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia:

	Amount agreed upon	$5,954,395.66
1.	Bonus received from Banks....	$96,253.62
20.	Merchants & Mechanics Bank Stock sold (bonus stock).....	$43,103.35
22. 23.	Northwestern Turnpike Road / Staunton & Parkersburg Road net tolls	$12,132.12
		$6,105,884.75

ALTERNATIVE FINDINGS.

1. At the request of the plaintiff; that the banks located in West Virginia paid into the Treasury of the Commonwealth of Virginia "in consideration of the privileges" granted ..... $ 96,253.62

Under items 7, 8, 9 and 10:

At the request of the defendant, that the aggregate of these items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth in said companies $807,646.89

20. At the request of the plaintiff, that the State received from the Merchants and Mechanics Bank, as a franchise tax 400 shares of stock which was sold for..... $43,103.35

Under items 22 and 23:

At the request of the plaintiff, that the aggregate of these two items was paid into the Treasury of the Commonwealth by the public as tolls upon roads owned wholly by the State $143,420.60

PARAGRAPH VII OF DECREE.

"7. THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY OF THE PRECEDING ITEMS AND NOT INCLUDING ANY PROPERTY, STOCKS OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA, TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF."

Under this Paragraph I find that the State of West Virginia received nothing in money from the Commonwealth of Virginia prior to the date of the organization of the Restored Government of Virginia or subsequent thereto.

ALTERNATIVE FINDING.

I find as an alternative finding, at the request of the plaintiff, that the State of West Virginia received from the Restored Government of Virginia sums of money as follows:

July 2, 1863.....	$92,866.17	
July 2, 1863.....	$47,734.03	$140,600.20
July 9, 1863.....		$9,399.80
Feb. 1, 1864.....		$20,771.46
		$170,771.46

Under the provisions of the Act passed February 3, 1863 (App. p. 128), there was transferred

to the State of West Virginia, among other things,

> "the interest of this state or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries, standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state" (do. p. 129).

While there is nothing in the record to show where the principal offices or places of business of the various turnpike companies, navigation companies and bridge companies are (Rec., 820 B, C, D, E, F, G, J, K), it is conceded upon the part of the defendants that the companies mentioned in said schedules had their "principal office or place of business" "located within the said boundaries," that is, the State of West Virginia, and such stock was transferred to West Virginia by the operation of said Act of February 3, 1863.

And it is conceded upon the part of West Virginia under Paragraph VII, that the stock in the various corporations above referred to, except the interstate companies, is included within the provisions of this Paragraph of the decree.

The only evidence in the Record bearing on the value of these various stocks are the facts that appear by these schedules showing the amounts paid by the State for its subscription to the stock of the various companies, and so far as dividends have been paid by said companies, the

amount of the dividends that have been paid, certain admissions relating thereto, and the testimony of a number of witnesses as to the physical condition of the property of some of the companies, and the statement of the condition of the banks. In the case of many of the turnpike companies, no dividends were paid and the only fact that I have is the amount that the State paid upon its subscription. In such cases the evidence does not seem to me sufficiently definite to enable me to find that the stock at the time of its transfer to West Virginia had any value, as the inference to be drawn from the fact that no dividends have been paid is, that the property was not able to earn any return upon the investment, and an investment that can pay no return could hardly be considered to have any market value. In the cases where dividends have been paid during a number of years, I have the amount of the investment made by the State with the rate of the dividends, and in such cases I have capitalized the dividend upon the basis of the stock being worth par with a six per cent. dividend, and have determined the value accordingly, except in cases where it appears that the property of the company may have been destroyed prior to June 20, 1863. The method that I have adopted is, I appreciate, arbitrary but it is the only method that seems to be feasible on the facts presented.

As to the Turnpike Companies intended to be covered by the stipulation (Rec., p. 864) the stipulation is too indefinite and uncertain to be of any assistance in determining the value of any particular road. The defendant contends that it covers some sixty-five roads and the plaintiff concedes only four. Only three of the roads claimed

by the defendant were paying dividends in 1860, viz.: Grave Creek and Pennsylvania Line Co.; Holiday Cove Co. and the Martinsburg & Potomac. As to these in order to eliminate any controversy, as to the construction and effect of the stipulation, the plaintiff concedes that for the purposes of this report, the interest of the Commonwealth in the stock of those companies was of no value, June 20, 1863.

As to the 18 Turnpike Companies mentioned on page 820-B Rec., only the last—Grave Creek and Pennsylvania Line Co., admitted to be of no value—appears to have ever paid any dividend. The earliest was incorporated in 1837; the latest in 1853. Under these circumstances, I find that the stock that the Commonwealth owned in those companies had no value.

None of the sixteen turnpike companies mentioned on Page 820-C, Rec., (eliminating Holiday Cove and Martinsburg & Potomac as of no value) declared any dividends, they having been organized between the dates of 1847 and 1854 and there is nothing to indicate that the stock had any market value on June 20, 1863 and I therefore find that these stocks were of no value.

The first fifteen turnpike companies mentioned on page 820-D, Rec., with the exception of the New Creek and Hardy Turnpike Company do not appear to have paid any dividends from the date of their incorporation up to 1860, the earliest being incorporated in 1830. The New Creek and Hardy Turnpike Company appears to have paid one dividend of $271.25 upon an investment on the part of the Commonwealth of $5,431.24 in 1850.

Under these circumstances, it does not appear that there are sufficient facts in the record to jus-

tify me in finding that there was any market value to the stock the Commonwealth held in any of these companies on the 20th day of June, 1863, and I therefore find that the stocks had no market value.

The Sheperdstown and Smithfield Turnpike Company, incorporated in 1816, in which the Commonwealth had invested in the stock $18,575, appears to have paid eight dividends during the period of 23 years ending in 1839 with no dividends since that date. The first dividend was paid in 1832, $399.38, and the last in 1839 of $40, showing a marked decrease in the dividend during the dividend paying period, with no dividends for the 22 years intervening between 1839 and 1861, and upon this state of facts I find that the stock in that company had no value on June 20, 1863.

Of the four remaining companies on page 820-D, Rec., only one appears to have paid any dividends. As to the other three, I find that their stock had no value on June 20, 1863.

The Sweet and Salt Sulphur Springs Turnpike Company, organized in 1849, in the stock of which the Commonwealth had an investment of $10,104. (820-D, Rec.) began to pay dividends in 1855 and paid continuously until 1859, the dividend in 1859 being $459. The average dividend paid during the five years of the dividend paying period was $491.-92. No dividend appears to have been paid in 1860, but the inference from the payment of dividends of a substantial amount, for the preceding five years, makes it reasonably certain that the property was of value and had a dividend paying capacity. Why a dividend in 1860 was not paid, does not appear, but in the absence of any evidence showing any injury to the physical value of the prop-

erty, or any unusual loss or the occurrence of any fact tending to destroy its value, I think it is a reasonable inference that the failure to pay the dividend must have been for a cause other than one affecting the real value of the stock, and on the basis of the last dividend of 4½ per cent. the investment of the Commonwealth would be worth $7,578. on the 20th day of June, 1863, and I value it at $7,578.

The first five turnpike companies mentioned on page 820-E, Rec., organized from 1847 to 1851 do not appear to have paid any dividends, and I therefore find that the stock that the Commonwealth held therein was of no value on June 20, 1863.

The White and Salt Sulphur Springs Turnpike Company, organized in 1834, in the stock of which the Commonwealth had invested $4,000, paid dividends continuously with the exception of two years from 1838 to 1860, the last dividend being $400, with an average dividend of $240 a year or 6%, I therefore value the interest that the Commonwealth held in the stock of this company at par, $4,000.

The other six turnpike companies mentioned on page 820-E, Rec., with the exception of Wellsburg and Washington Turnpike Company do not appear to have paid any dividends, and I therefore find that the interest that the Commonwealth held in the stock of these companies was of no value on June 20, 1863.

The Wellsburg and Washington Turnpike Company organized in 1808, in which the Commonwealth had an investment of $7,071.01, paid two dividends in 1837 and 1838, the last being $212.13, and has declared no dividends since, and

I find that under those circumstances the stock of that company on June 20, 1863 had no value.

The four navigation companies mentioned on page 820-F, Rec., organized between 1817 and 1853 do not appear to have ever declared any dividends and I find that the stock of the Commonwealth in these companies had no value June 20, 1863.

It is admitted that the bridge of the Buchannon Bridge Company was destroyed April 1863, and that the bridge of the Cheat River Toll Bridge Company, was destroyed in the same month, and that the bridge of the Elk River Bridge Company, was destroyed in 1862. The bridge of the North Branch Bridge Company was destroyed in 1862, and the bridge of South Branch Bridge Company was destroyed in 1862, and that the bridge of the Virginia and Maryland Bridge Company was destroyed in 1861 (Rec., p. 863).

I find that the stock in these companies was of no value on June 20, 1863.

The Fairmont and Palatine Bridge Company, in the stock of which the Commonwealth had invested $12,000 it is admitted paid a six per cent. "dividend for several years after the end of the war on the par value of the stock of $12,000 assigned to the State of West Virginia therein," and for that reason I find that that stock was of the value on June 20, 1863 of $12,000 (Rec., p. 863).

The Guyandotte Bridge Company and the Morgantown Bridge Company, incorporated respectively in 1848 and 1850, have never paid any dividends and for the reasons given above, I find that the stock that the Commonwealth held in those companies was of no value on June 20, 1863.

The four turnpike companies referred to on page 820-G, Rec., organized respectively in 1832,

1837 and 1851 do not appear to have ever paid any dividends and for that reason, I hold that the stock in those companies on June 20, 1863 was of no value.

The five turnpike companies referred to on page 820-H, Rec., with the exception of the Hillsborough and Harpers Ferry Turnpike Company and the Martinsburg and Winchester Turnpike company, while organized in 1846, 1851 and 1856, respectively, do not appear to have ever paid any dividends, and for that reason I hold that the stock was of no value on June 20, 1863.

The Hillsborough and Harper's Ferry Turnpike Company, incorporated in 1849, in the stock of which the Commonwealth invested $6,000 declared only one dividend of $240 in 1856, and upon that state of facts I am not able to find that the stock had any value on the 20th day of June, 1863.

The Martinsburg and Winchester Turnpike Company, organized in 1838, in the stock of which the Commonwealth had invested $27,000 declared two dividends one in 1859 and one in 1860 of $803.27 and $405 respectively. Taking the last dividend as the basis of valuation which was at the rate of one and ½ per cent. or ¼ of 6 per cent., I find that the stock in that company was on June 20, 1863 of the value of $6,750.

There is nothing in the record to show where "the principal office or place of business" of this road is located and I do not understand that the admission of the defendant applies to interstate roads. I am not able to find that this stock was ever transferred to West Virginia. This is an interstate road 59.09% being within the counties included within the State of West Virginia.

Of the two corporations mentioned on page 820-J, Rec., one the North Frederick Turnpike

Company in which the Commonwealth invested in its stock $11,325 in 1851, paid only one dividend and that in 1857, and upon these facts I do not feel authorized to find that the stock had any value on the 20th of June, 1863.

The Raleigh and Wythe Line Turnpike Company, organized in 1860, in which the Commonwealth paid on an authorized stock subscription of $4,800, $400 only, does not appear to have paid any dividend that year and apparently could hardly have been fully constructed. There is not sufficient data in the record to enable me to form any opinion as to its value, and therefore, I do not find that the stock had any value on June 20, 1863.

On the 20th of June, 1863, the Commonwealth held 3,418 shares of the capital stock of the Northwestern Bank of Virginia of a par value of $100, which if worth par would be worth $341,800. This par value was at first conceded by the defendant to be chargeable to West Virginia (Rec., p. 280-A, Deft.'s Ex. G-1, p. 1). Since filing the schedule making this admission, West Virginia withdrew the admission and changed it to $136,630., and that sum was reached as follows:

It appears from the testimony of Mr. Dering (Rec., p. 892) and the certificate of J. S. Darst, the auditor of West Virginia (do., p. 851) and supplemental brief filed by defendant, that West Virginia received on account of the original stock in the Northwestern Bank of Virginia at Wheeling, 300 shares of stock in the National Bank of West Virginia in the City of Wheeling, 400 shares of stock in the Parkersburg National Bank of Parkersburg, West Virginia, and 351 shares of stock, in the first National Bank of Wellsburg,

at Wellsburg, West Virginia, these being the banks that were the successors of the Northwestern Bank of Virginia, known as the parent bank and of its branches at Parkersburg and Wellsburg, respectively. The par value of the shares was $100. At their par value they would be worth $105,100. The record contains nothing as to the assets of these banks, upon which an estimate of the value of this stock can be made. It further appears that dividends from the remaining assets of the Northwestern Bank of Virginia were received by West Virginia as follows:

July 9, 1867	$10,510.00
August 12, 1868	$10,510.00
Sept. 1, 1871 (in deft.'s brief)	$10,510.00
	$31,530.00

which added to the $105,100 makes the total amount now admitted by West Virginia as the value of the 3,418 shares of the stock of the Northwestern Bank. There is nothing in the record to show when this bank was reorganized or the circumstances under which the reorganization took place. The auditor's report of West Virginia shows the stock was delivered July 1, 1866. The reorganization and the distribution of the stock in the various banks, and of the cash dividends, appear to have taken place three years and more after June 20, 1863. Upon the other hand, as indicating the value of the stock, there is a joint "Supplemental Ex. 8" certified by the accountants for both parties, showing that the dividend for 1860 upon the stock of the Northwestern Bank was eight per cent. and the average dividend from

1844 to 1860 inclusive was 7½%, or 1-4 more than 6%. The statement of the condition of the Bank in a return made February 27, 1861, showing the condition on Jan. 1, 1861, and one of the Fairmont bank dated Apr. 27, 1861, showing its condition Apr. 1, 1861, are marked "Supplemental Ex. 9."

The defendant concedes that the Fairmont bank that was paying only a 4% dividend was worth par June 20, 1863 (Rec., p. 820-A).

There is nothing to indicate any change of any kind in the condition of the Northwestern Bank, either by way of assets or business or capacity to declare dividends between Jan. 1, 1861 and June 20, 1863. That it met with some serious financial difficulties between January 1, 1861, and July 1, 1866, would seem to be a necessary conclusion from the condition of the bank at the time of its reorganization, but as to what they were, or when they occurred, the record is silent.

A comparison between the Fairmont Bank and the Northwestern will be instructive on the question of value. The notes due from other banks in Virginia to the Northwestern increased from 1860 to 1861 approximately 100%, and there was substantially the same percentage of increase of similar notes due to the Fairmont Bank. The surplus and profits of the Northwestern decreased from 1860 to 1861, 10%. In the Fairmont Bank there was an increase of 11%. If the Fairmont Bank had paid a dividend of 6% instead of 4% the decrease would have been substantially the same. The surplus of the Northwestern was nearly 12% of its capital, of the Fairmont about 5¾%. In the Northwestern the deposits decreased 4% and in the Fairmont 20%. The Fairmont Bank appears to have paid but one dividend

of 4%. The Northwestern had an established business and had been paying dividends regularly since 1843 at an average rate of 7½% (for four years 10%), and was paying 8% in 1860. If under these circumstances the Fairmont Bank stock was worth par, it seems that the Northwestern stock should be worth at least ¼ more than par, and I would be justified in applying the same rule as to value, that I have applied to the public service corporations, and I therefore add ¼ to the par value and find the value of the stock June 20, 1863, to be $427,250.00.

I think it clear that this is a conservative value Jan. 1st, 1861, two years and five months prior to the time when the valuation is made. There is a presumption of continuance. There was great expectation of success in the Confederacy, until Gettysburg in July, 1863, which had some tendency to maintain credit conditions, and while my conclusion is largely arbitrary, taking everything into account, I think the valuation reached reasonable.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that West Virginia received on account of the reorganization of the Northwestern Bank in stock and cash $136,630. between July 1, 1866, and Sept. 1, 1871, and it does not appear that at that time the Northwestern had any other assets.

I find pursuant to the admission of the defendant (Rec. 820 A) that the stock of the Fairmont bank was of the value of $50,000.

A detailed statement of the investment of the Commonwealth in the capital stock of the James

River and Kanawha Company appears on pages 820-L and 820-M, Rec. By this it appears that 3.49 per cent. of the improvement was located in West Virginia (p. 820-M). The only dividend that the company appears to have ever paid is $10,092. in 1836 (p. 820-L).

Under these circumstances I find that the stock of this Company had no value on June 20, 1863.

Summary.

I find the values set against the respective companies as follows:

Sweet & Salt Sulphur Spring Co. stock	$7,578.
White & Salt Sulphur Spring Co. stock	$4,000.
Fairmont & Palatine Bridge Co. stock	$12,000.
Northwestern Bank of Va. stock	$427,250.
Fairmont Bank stock	$50,000.
Total	$500,828.

Alternative Findings.

Received by West Virginia from the Restored Government	$170,771.46
Received by West Virginia between July 1, 1866 and Sept. 1, 1871, from the reorganization of the Northwestern Bank in stock and cash	$136,630.

GENERAL SUMMARY.

PARAGRAPH I.

Amount of the Public Debt of the Commonwealth of Virginia January 1, 1861, $33,897,073.82.

Stated as a Special Circumstance:

Amount of bonds of Commonwealth held by Sinking Fund, $1,369,243.92.

Amount of bonds of Commonwealth held by Literary Fund $1,116,843.35.

Amount of Bonds Chesapeake & Ohio Canal Co. guaranteed by Virginia in 1847 $300,000.

PARAGRAPH II.

1. EXTENT:

Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:		
Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

With Slaves:		
Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%
Without Slaves:		
Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

Alternative Finding.

At the request of defendants, I make an alternative finding that the population of the counties now forming the State of Virginia, as shown by the census of the United States for 1860, is as follows:

Without slaves,	747,136=67.5864%
With slaves,	1,219,630=76.4027%

And for the counties now forming the State of West Virginia:

Without slaves,	358,317=32.4136%
With slaves,	376,688=23.5973%

The assessed valuation of the territory of Virginia for 1860 was: $293,105,895.55

The assessed valuation of the territory of West Virginia for 1860 was: $83,814,355.61

Paragraph III.

Expenditures made by the Commonwealth of Virginia within the territory now constituting West Virginia are as follows:

1.	Amount agreed upon by both parties	$1,251,288.92
2.	Covington & Ohio R. R.	$1,146,460.42
10.	Kanawha Turnpike	$ 152,130.54
11.	" "	$ 2,593.92
12.	" "	$ 7,189.65
13.	" "	$ 80,955.28
14.	Kanawha River Improvements.	$ 59,572.36

25. Brandonville, Kingwood & Evansville Road	$	10,595.73
28. Clarksburg & Buchannon Turnpike (Macadamizing)	$	19,259.36
35. Kingwood & West Union Turnpike	$	18,140.61
55. Surveys—expended directly within the territory	$	60,873.19
150. Road from Bath to St. Johns River	$	2,500.00
Total		$2,811,559.98

ALTERNATIVE FINDINGS:

At the request of defendant.

The Commonwealth received on account of the Blue Ridge Railroad in bonds and interest....	$625,348.08
and was relieved from a contingent liability upon a guarantee of...	$100,000.00

3. At the request of the plaintiff, the Commonwealth subscribed and paid for capital stock of the Winchester & Potomac Railroad Company, to the extent of. $120,000.00

The Commonwealth loaned to the said company	$150,000.00
Upon the basis of mileage, the proportion of these sums that would be chargeable to West Virginia, is	$170,532.00

I state as a special circumstance important to be taken into account that as a result of legislation predicated upon both the

stock and loan that the Commonwealth had in this Road, there was paid into the Commonwealth in 1886, the sum of.. $118,518.12

6. At the request of the plaintiff, that the Commonwealth subscribed and paid for stock in the Berryville and Charlestown Turnpike Co. and upon the mileage basis of 58 1/3 per cent. the amount chargeable to West Virginia would be..... $11,932.52

15. At the request of the plaintiff, that the Commonwealth loaned to the Kanawha Board of its bonds ..... $60,000.

56. At the request of the plaintiff, that ..... $27,000 was in the hands of the Treasurer of the Trans-Allegheny Lunatic Asylum, deposited in the Weston Branch of the Exchange Bank of Virginia, unexpended, January 1, 1861, which was afterwards taken from the Bank by the Restored Government of Virginia and subsequently returned to the Asylum.

At the request of the plaintiff, that in the various bridge companies, located in West Virginia. Items 57 to 65, inclusive, the Commonwealth subscribed and paid for stock $78,412.50

That in the various navigation companies located in West Virginia Items 66 to 69, inclusive, the Commonwealth subscribed and paid for stock..... $210,500.00

That in the various Turnpike companies, Items 70 to 147, inclusive, all of which were in the territory now constituting West Virginia, the Commonwealth subscribed and paid for stock..... $803,555.83
700,103.49 of which was wholly in Virginia and $103,452.34 was West Virginia's portion in case of companies partly within her limits.

That in the two banks mentioned in Items 148 and 149, within the territory now constituting the State of West Virginia the State subscribed and paid for stock $391,800.00

At the request of the defendant, I find that the sum of $2,500 was invested under circumstances where the trustees of the Town of Bath assumed a contingent liability, only, of paying the interest upon the sum expended by the State, after the tolls remaining from the operation of the road after the payment of 'necessary expenses and repairs'' and profits received from the operation of a spring,

were applied thereto, and that this was the only liability that the trustees of the Town of Bath assumed in connection with this expenditure of..... $2,500.

PARAGRAPH IV.

SUMMARY ORDINARY EXPENSES.

	The amount agreed upon between the parties, is.....	$18,207,684.29
1.	Tobacco receipts	$353,123.96
3.	Slaves transported and executed	$311,168.35
5.	Maps, Board of Public Works	$11,446.48
7.	International Exchanges....	$2,836.19
9.	Printing Treasury Notes....	$375.74
13.	Improvement in public squares	$1,456.91
14.	Fugitive slave expense; reward additional	$2,201.00
16.	Calling out militia at Wheeling, in 1836.....	$1,099.00
18.	Atty.-Gen.'l fees prosecuting Selden, Withers & Co. claim	$500.00
19.	Remodelling and repairing old building of Eastern Asylum	$5,000.00
	Support Western Asylum...	$7,450.01
23.	Sundry Board of Public Works expenses.....	$36,728.50
24.	Interest on public debt.....	$18,574,747.84
	Expenses of Harper's Ferry Raid	$251,763.65
	Expended for primary schools	$2,400,331.11

General expenses connected with surveys	$106,983.67
	$40,274,896.70

SUMMARY ALTERNATIVE FINDINGS.

1. At the request of the defendant, that the Commonwealth received from Tobacco Receipts.....	$353,123.96
2. At the request of the plaintiff, that the Commonwealth expended for two Constitutional Conventions, held in 1829 and 1850	$258,906.28
4. At the request of the plaintiff, that under the acts of the legislature above referred to, the Commonwealth expended in running boundary lines.....	$16,704.78
5. At the request of the plaintiff, that the Commonwealth expended under acts of the legislature for maps	$16,628.04
6. At the request of the plaintiff, that The Commonwealth expended in original construction and other additions to or increase of the plant of the Deaf, Dumb and Blind Institution, the details of which are on pp. 5, 6 and 7 of Joint Ex. D-1.....	$80,661.94

8. At the request of the plaintiff, that the Commonwealth overpaid on Treasury notes.....	$50.00
10. At the request of the plaintiff, that the Commonwealth lost on account of counterfeit money	$190.00
11. At the request of the plaintiff, that the Commonwealth expended in the erection of buildings and additions thereto and installation of heating and lighting plants connected with the Va. Military Institute....	$151,000.00
12. At the request of the plaintiff, that the Commonwealth expended in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation" of buildings &c. of the University of Virginia.....	$25,000.00
13. At the request of the plaintiff, that the Commonwealth expended for Improvements to Capitol Square the sum of....	$12,278.47
15. That the Commonwealth expended on additions to Penitentiary lot, New Hospital, Buildings, etc.....	$13,947.48
17. At the request of the plaintiff, that the Commonwealth ex-	

pended for "enlarging the hospital and infirmary and extending the college buildings, and for improvement and extension of the college museum" of the Medical College of Virginia..... $25,000.00

19. At the request of the plaintiff, that the Commonwealth expended on the Eastern & Western Asylums for items appearing on pages 531 to 538 incl. —Joint Ex. D-1, pp. 15 to 22 incl. $331,845.56

20. At the request of the plaintiff, that the Commonwealth expended for Gun House at Alexandria $900.00

21. At the request of the plaintiff, that the Commonwealth expended for Cannon House, Surrey County $110.00

22. At the request of the plaintiff, that the Commonwealth expended for Cannon House for Richmond Artillery..... $1,079.09

23. At the request of defendant, that the Commonwealth expended for expenses of the B. P. W... $36,728.00

24. At the request of the defendant, that the Commonwealth ex-

pended for interest on its public debt $18,574,747.84

I find in the alternative at the request of the plaintiff, that the amount of the ordinary expenses and the apportionment thereof, according to the claims of the plaintiff, are correctly stated on pages 515 and 516 of the Record.

PARAGRAPH V.

June 20, 1863.

Fair estimated value of real estate in Virginia counties....	$148,042,730.15
Fair estimated valuation of personal property including slaves in Virginia counties...	$403,696,228.59
Total real and personal in counties in Virginia including slaves..	$551,738,958.74
Fair estimated value of real estate in West Virginia counties	$67,676,127.44
Fair estimated valuation of personal property including slaves in West Virginia counties	$30,394,487.21
Total real and personal in counties in West Virginia, including slaves.....	$98,070,614.65
Fair estimated valuation of real estate in counties in Virginia	$148,042,730.15

Fair estimated valuation personal property in counties in Virginia without slaves.....	$152,844,637.59
Total real and personal in counties in Virginia without slaves	$300,887,367.74
Fair estimated valuation of real estate in counties in West Virginia	$67,676,127.44
Fair estimated valuation personal property in counties in West Virginia without slaves.....	$24,739,894.21
Total real and personal in counties in West Virginia without slaves	$92,416,021.65

ALTERNATIVE FINDING.

AT THE REQUEST OF DEFENDANT.

The assessed valuation of real estate in the counties of Virginia June 20, 1863 was.....	296,085,460.31
The assessed valuation of real estate in the counties of West Virginia June 20, 1863 was..	$82,449,252.04
Amount of income assessed in Virginia counties, 1863.....	$11,108,300.13
In West Virginia counties in 1863	299,257,45

Jan. 1, 1861.

A fair estimated valuation of the property, real and personal, in Virginia counties, on January 1, 1861, I find to be as follows:

The parties agree that on that date, the fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia was at that time	$162,537,936
The assessed value of the other personal property in Virginia counties was	$102,114,863

This sum is reached by taking the amount of the assessment for 1861 (Rec., p. 645), 100,201,850, and adding thereto the assessment for Chesterfield for 1861 (Plff. Ex. H1., p. 355), 1,077,368, and Goochland (Plff. Ex. H1., p. 395), 835,645, these two counties not being included in the Schedule (Rec., p. 645), as no original books were found showing those assessments.

Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30
And that the fair estimated valuation of such slaves at that time in the counties now constituting the State of West Virginia was	$6,319,624

Other personal property in West Virginia (Supplemental Exh. 6)	$23,469,172
Real estate in West Virginia	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses as found by me on the basis of values as claimed by plaintiff as shown in Joint Exhibit E-1, p. 2-a, excluding slaves is

Virginia, ...	$28,278,857.62
West Virginia, ...	$11,996,039.08

and on the same basis as shown in Joint Exhibit E-1, p. 3-a, including slaves,

Virginia, ...	$30,441,418.20
West Virginia, ...	$9,833,478.50

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses of the government as claimed by the plaintiff, on the basis of the values as claimed by the plaintiff, excluding slaves is as appears upon Joint Exhibit E-1, p. 2-a, and including slaves as appears upon Joint Ex. E-1, p. 3-a.

PARAGRAPH VI.

Money paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia:

Amount agreed upon.....	$5,954,395.66
1. Bonus received from Banks.....	$96,253.62
20. Merchants & Mechanics Bank Stock sold (bonus stock).....	$43,103.35
22. Northwestern Turnpike Road 23. Staunton & Parkersburg Road net tolls	$12,132.12
	$6,105,884.75

ALTERNATIVE FINDINGS.

1. At the request of the plaintiff, that the banks located in West Virginia paid into the Treasury of the Commonwealth of Virginia "in consideration of the privileges" granted ..... $ 96,253.62

Under items 7, 8, 9 and 10:

At the request of the defendant, that the aggregate of these items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth in said companies $807,646.89

20. At the request of the plaintiff, that the State received from the Merchants and Mechanics Bank, as a franchise tax 400 shares of stock which was sold for..... $43,103.35

Under items 22 and 23:

At the request of the plaintiff, that the aggregate of these two items was paid into the Treasury of the State

by the public as tolls upon public roads owned wholly by the State...	$143,420.60

PARAGRAPH VII.

I find the values set against the respective companies as follows:

Sweet & Salt Sulphur Spring Co. stock	$7.578.
White & Salt Sulphur Spring Co. stock	$4,000.
Fairmont & Palatine Bridge Co. stock	$12,000.
Northwestern Bank of Va. stock..	$427,250.
Fairmont Bank stock	$50,000.
Total	$500,828.

ALTERNATIVE FINDINGS.

Received by West Virginia from the Restored Government....	$170,771.46
Received by West Virginia between July 1, 1866 and Sept. 1, 1871, from the reorganization of the Northwestern Bank in stock and cash.....	$136,630.

Dated, New York, March 17th, 1910.

CHARLES E. LITTLEFIELD,
Special Master.

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FILED
JAN 22 1915
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1913

No. 2 ORIGINAL.

COMMONWEALTH OF VIRGINIA,

Complainant

vs.

STATE OF WEST VIRGINIA

REPORT OF SPECIAL MASTER.

ON

SUPPLEMENTAL ANSWER.

January 21, 1915.

In the

Supreme Court of the United States

October Term, 1913.

No. 2 Original.

COMMONWEALTH OF VIRGINIA, v. STATE OF WEST VIRGINIA.	*in equity.*

I, CHARLES E. LITTLEFIELD, Special Master appointed under an order made in the foregoing case, respectfully submit the following report:

FIRST. Attention should be called at the outset, before any statement of the facts and conclusions predicated thereupon in this present reference, to what might otherwise result in some misunderstanding or confusion. It is referred to by Mr. Chief Justice White in the last opinion in this case as follows, "We think it is obvious that most of the items embraced in the answer were contained in the Master's report." An examination of the seven findings in answer to the seven requests originally submitted to the Master for his finding will disclose the fact that the issue of these assets, or "investments" as they are called in the opinion of the Court, and their value as elements of set-of in favor of West Virginia was not submitted in any of the proposed findings. These are the "inquiries" that the Master was by the Court "directed to make." Whether the statement that the Master "is to be at liberty to state any special circumstances he considers of importance," was broad enough to justify him in entering upon the extensive investigation involved in the

present hearing, and ascertaining the existence and value of the investments claimed, or whether it fairly opened that issue up to the defendant in the former hearing, is perhaps now an academic question; as, if open then to the defendant it is certain, and it was so agreed at the argument of this case, by the counsel on both sides, that the defendant did not engage in that investigation. Such investigation is therefore now prosecuted for the first time. So far as the various items were referred to they were referred to for an entirely different purpose in the main; and so far as there are any exceptions to this suggestion these exceptions will be noted in the proper connection.

SECOND. The rights of the parties litigant depend entirely upon the proper construction to be placed upon "The contract established, * * * the plain contract of West Virginia," as evidenced by the provisions of Article VIII., Section 8, of the Constitution of West Virginia, which reads as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

This is the whole section, and unless there appears to be some controlling reason to the contrary it should all be read together.

It is contended that the contract ends with the word "State." Before the Court it was argued that if Section 8 was the contract, "the determination of a just proportion was left by the Constitution to the Legislature of West Virginia, and that irrespectively of the words of the instrument it was only by legislation that a just proportion could be fixed." As

to this the Court said, "These arguments do not impress us;" and held that the provision referred to was "not intended to undo the contract in the preceding words by making the representative, the mouth-piece of one of the parties, the sole tribunal for its enforcement," and West Virginia was not therefore made a judge in her own cause. The fact that the Court has held that the provision requiring the Legislature of West Virginia to "ascertain the same as soon as may be practicable," did not make West Virginia a judge in her own cause, does not eliminate that clause from the contract evidenced by the whole of Section 8, and the clause still remains a part of the constitutional contract. It held that this clause "was simply an exhortation and command from supreme to subordinate authority to perform the promise as soon as might be, and an indication of the way." This obligation still remains upon West Virginia and is as binding now as when first enacted. I do not understand that the Court held that this clause and the language following it constituted "no part of the contract or promise." I understand them to hold that it was a part of the contract, and as such binding upon West Virginia, although they declined to adopt the construction contended for. They held it to be an "exhortation and command," and an "exhortation and command" it still remains. The fact that the Court referred to the portion of the section preceding the clause relating to ascertaining, as follows, "was not intended to undo the contract in the preceding words," does not justify the inference that "the preceding words" embraced all of the provisions of the contract included in Section 8. They did embrace the fundamental idea "an equitable proportion of the public debt," which fully covered the point then being made by the Court. The Court was not giving a construction of the whole section, and certainly did not say, and in my judgment did not intend to be understood, that the latter half of this section, a legitimate and proper corollary of the first, was no part of the contract. The whole section, with this "exhortation and command" imbedded therein, is to be construed as a whole on the basis of what "is

just and equitable," and it "is a judicial question similar to many that arise in private litigation, and in no wise beyond the competence of a tribunal to decide." A correct construction of this contract requires to be borne in mind the circumstances under which it was made and the purpose or end sought to be accomplished.

The Court has decided that the basis upon which the rights of the two States are to be determined is that of the "estimated valuation of the real and personal property of the two States on the date of the separation, June 20th, 1863." And this I shall refer to in the discussion of the meaning of the contract, as a matter of convenience, as their respective resources. The Court held that the comparative resources were 76½ per cent. for Virginia and 23½ per cent. for West Virginia. At the time of the separation, ascertained as of January 1st, 1861, or "prior to the 1st day of January, 1861," the State of Virginia was indebted in the sum of $33,897,073.82, made up as follows:

Accrued interest, January 1st, 1861,	$977,209.89
Bonds, drawing interest, redeemable at the pleasure of the General Assembly,	9,219,271.03
Bonds, drawing interest, redeemable at various definite periods,	23,699,592.90

(pp. 386-392-E.)

On that date Virginia had on hand $819,250.03 in her sinking fund, and stocks in banks, railroads and improvement companies, with some loans to the same companies. The sinking fund was required by the Constitution of Virginia to "be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable." (p. 651). These stocks were all paid for by the proceeds of the debt in question. "The stock of any joint company * * * * together with the dividends," etc., were by the Act of the Assembly of Virginia, of April 9th, 1838, "appropriated and pledged" for the payment of the interest, and the final re-

demption of the principal, of any sum borrowed for the purpose of purchasing the stocks referred to. (pp. 661-664.) This Act was contained in the Code of 1849, and was the law of Virginia up to January 1st, 1861. The Constitution of Virginia of 1851, Article X., Section 30, provided:

> "The general assembly may, at any time, direct a sale of the stocks, held by the Commonwealth in internal improvement and other companies; but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the Sinking Fund, and be applied in like manner."

And in 1853 the General Assembly provided as follows:

> "If at any time the legislature shall direct a sale of the stocks held by the Commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than as herein directed, except in time of war, insurrection and invasion." (Chap. 17, Sec. 3) (652)

This was the condition of the constitutional and statutory provisions of Virginia with reference to these stocks and the debt January 1st, 1861. There were other assets such as loans, etc. The existence of all these assets or investments is conceded, but the values claimed are denied. So that we have, as the circumstances under which this contrect was made, a large interest bearing debt, and investments purchased with its proceeds, together with certain cash, all of which were specifically dedicated to the payment of the debt and interest. These facts were unquestionably all well known, to all the parties interested, and participating, in the separation of West Virginia from Virginia. With these facts in view they provided that "an equitable proportion of the pub-

lic debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State," etc. Clearly the rights of the parties are to be determined upon equitable principles. What was the purpose of this contract? It was to do equal and exact justice between the parties. They were to be left, after the separation, precisely as they were before, as to their respective rights, obligations and duties, inhering in, and resting upon their respective resources. It was not intended to deprive either the 76½ per cent. of the resources or the 23½ per cent. of the same resources of any rights that they might have had before the separation, nor was it intended to add to, or take from, the liabilities or obligations of either. It was intended to leave them with reference to all of these factors precisely as they were before the separation took place. If before the separation 23½ per cent. of the resources, in order to make an adjustment between it and 76½ per cent. of the resources, would be entitled to have assets or investments, purchased by the proceeds of the debt and specifically dedicated to its payment, appropriated toward its payment before the 23½ per cent. of resources could be required to pay its pro rata share, then those resources, after the separation, would be still entitled to have such appropriation made before it could be required to contribute to the payment of the real debt. Upon the other hand, if the 23½ per cent. was, before the separation, liable to pay that proportion of the whole debt with the interest accruing thereon, that liability remained upon the same resources, after the separation, without diminution or change. The concluding clause of the contract, given its natural meaning under the conditions in which it was used, clearly reinforces the idea that the purpose was to maintain so far as possible the status quo, as to the debt and the interest which was clearly by contract a part thereof. Virginia had a sinking fund as well as assets or investments, both of which were specifically dedicated to the payment of this debt, with which to pay the interest and principal of the debt. Setting off 23½ per cent.

of her resources by the separation would impair her ability to pay the principal and the "accruing interest" to that extent. The assuming by West Virginia of 23½ per cent. of the debt, with the interest which was a part thereof, would take care of the debt and of the inseparable interest, so far as the element of resources was concerned. But inasmuch as Virginia had a sinking fund (in addition to her 76½ per cent. of the resources as well as the investments specifically dedicated to the payment of the debt), an important factor of security for the bondholders, as well as for Virginia herself, if the Constitution had stopped there the equilibrium between the two parties or two resources jointly liable for this loan, principal and interest, as to security would have been destroyed. Therefore the following provision was added:

> "And the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay 'accruing interest' and redeem the principal within thirty-four years."

With this provision thus construed the bondholders and Virginia would have practically the same security and guarantee as to the 23½ per cent. of the resources after the separation, that they were in the possession of before the separation. Some of the bonds ran nearly thirty-four years, others for a shorter time, and some were redeemable at the pleasure of Virginia. That is a detail, however, that could not well be provided for in a constitutional provision, and was therefore left for the parties to settle, and, in default of an agreement, for adjustment by the Court, a detail which could not practically be provided for in a constitutional provision.

I believe the provision for the sinking fund was intended to make, for the security of the bondholders and Virginia, the same wise provision that applied thereto before the sep-

aration, and that "accruing interest" for which West Virginia was bound to provide, and which she was required to assume by the contract, was the "accruing interest" on the existing debt, evidenced by the terms of its bonds, making the amount not only definite and certain, but an inseparable part of the debt itself. If this construction is correct, West Virginia would be liable for 23½ per cent. of the "accruing interest" of such portion of the debt as she ultimately turns out to be liable to pay. Upon the contention of West Virginia there is no liability for interest until the decree of the Court hereafter to be entered shall be made, finally determining the principal sum due. I understand it to be conceded by her that upon her construction the Constitution placed her in a position where she can compel Virginia to accept her bonds, secured by the sinking fund described, in extinguishment of her liability to Virginia for the sum that may be ultimately found due.

One difficulty with this theory is that, while the time that the bonds may run may be said to be indicated, the rate of interest is not specified. If that was the intention it seems to me it was absolutely necessary that that factor should not have been omitted. In the absence of knowing the rate of interest, the amount of the sinking fund could not be determined. The amount of the "accruing interest" on the debt of Virginia was an ascertained sum. If the "accruing interest" and the sinking fund provisions related only to a debt which West Virginia might create, for the purpose of raising the amount necessary to pay her "equitable proportion of the public debt," no reason is perceived why such "accruing interest" and such a sinking fund should be specifically provided for in the section which defined the obligations of West Virginia to Virginia with reference to Virginia's public debt. If the provision is entitled to the construction contended for, it would more properly have been provided for in a general provision that would have applied to all of West Virginia's indebtedness, as upon that construction there appears to be

no reason why this particular debt, as against all others, should be thus provided for.

The construction suggested seems to me unnatural and artificial, and I do not see how it can be successfully contended that it is not inequitable and unjust to Virginia. Under it, by the mere act of separation, 23½ per cent. of the resources would be relieved of all of its pre-existing liability for the payment of that proportion of the "accruing interest," which was an inseparable part of the debt, and Virginia would be obliged to pay West Virginia's proportion as well as her own. If the date fixed for the ascertainment of the "equitable proportion of the public debt" had not been set back to "prior to" January 1st, 1861, and the provision had simply been that an equitable proportion of the public debt should be assumed, I understand all parties to agree that equity would require the ascertainment of the debt and the value of the investments, and their application towards the extinguishment of the debt, to be made as of the same date. If the equities are to be maintained I am unable to see why the same rules do not apply, although the date was set back more than two years.

It was clearly within the power of the parties to agree upon an arbitrary date, as to which all the factors involved would relate, and on which they would be determined, and which would be governed by the same equitable rules and principles as would apply to the settlement made as of the date of the separation. Practically, their rights could be determined as well upon one date as upon another. The presumption is, that by agreeing on a date prior to separation, they did not intend to invade or impair the rights of either party. Unless something appears in the contract, or in the proceedings, or in the concurrent history, to indicate the contrary, and I am unable to find anything of that character, that result must necessarily follow. The fact that their rights are to be determined upon equitable principles negatives any such intent. If assets and liabilities are to be adjusted equitably, that they should both be considered as of the same date would seem to be axiomatic.

It may be said that this conclusion results in an incongruity, as West Virginia did not become a State until June 20th, 1863, and could not therefore acquire any title to the assets or investments on January 1st, 1861, as she was then non-existent. The answer to that suggestion is that the assumption is without foundation. West Virginia never at any time acquired any title to these assets, even after the separation. They were originally the assets of Virginia, and they remained her assets throughout, until disposed of by her, if disposed of. The only right that West Virginia acquired as to these assets or investments, as against Virginia, was the right to require Virginia, on the date agreed upon, to apply the assets or investments, at their fair value at the time agreed upon, towards the liquidation of her own debt; so that West Virginia could know, when the assets were so applied, the amount of the real debt remaining to which she would be obliged to contribute. It was perfectly competent for the two States to agree upon any date upon which the debt and the value of the assets and the investments, and the difference between the two, could be ascertained. West Virginia's rights do not depend upon any title that she acquired to assets solely owned by Virginia, as to which she did not and could not acquire any title, but they do depend upon the agreement of Virginia to account for these assets or investments, at their fair value upon the date when the amount of the debt is to be ascertained. This is an absolute protection to West Virginia, as Virginia cannot recover any portion of the debt of West Virginia until those assets are thus accounted for and applied. This construction is in my judgment plain, clear, simple, equitable, just, and completely and adequately protects every legal and equitable right of both of the parties thereto.

It is my conclusion, therefore, that the assets are to be valued as of January 1st, 1861, and that the liability of West Virginia for interest begins on that date, by virtue of the contract between her and Virginia, and runs at the rate pro-

vided for in the bonds that evidence the debt, and make the interest an inseparable part thereof.

I do not understand that I have any power under this reference to determine the balance, if any, that may be due from West Virginia, in other words her "proportion of the public debt" for which she is liable, as the opinion of the Court specifically reserves to itself the determination of the effect of any of the conclusions that I may reach in connection with the assets or investments upon the principal sum already found due from West Virginia to Virginia. As interest can only accrue upon that "proportion" which is ultimately found to be the balance due from West Virginia to Virginia, there is no sum upon which interest can be computed, and I therefore make in this case no computation of interest.

THIRD. The important question to be determined is the rules by which, under the record, the value of the various investments is to be ascertained. Substantially four factors only appear in the record as bearing upon the question of value: market quotations, par value and amount paid for the stock, book values predicated upon assets and liabilities, and dividends or earning capacity.

A.

It seems to be well settled that, in order to make market reports of quotations admissible, quotations must come from such newspapers as the commercial world relies upon in ordinary business transactions. And some of the cases go farther and require that in addition to that the verity of the reports shall be established by extrinsic evidence; although the weight of authority does not perhaps require this additional qualification.

> "The principle which supports these cases will allow the market reports of such newspapers as the commercial world rely upon, to be given in evidence. As a matter of fact, such reports, which are based upon a general sur-

vey of the whole market, and are constantly received and acted upon by dealers, are far more satisfactory and reliable than individual entries, or individual sales or inquiries; and courts would justly be the subject of ridicule, if they should deliberately shut their eyes to the sources of information which the rest of the world relies upon, and demand evidence of a less certain and satisfactory character."

Sisson vs. Cleveland & Toledo Ry. Co., 14 Mich., 489.

Cleveland & Toledo Ry. Co., vs. Perkins, 17 Mich., 296.

Tully vs. W. U. Tel. Co., 141 Ill. App., 312.

Jones vs. Ortel (Md.), 78 Atl., 1030.

Wilber vs. Buckingham (Ia.), 132 N. W., 960.

St. L. & S. F. Ry., vs. Pearce (Ark.), 101 S. W., 760.

Moseley vs. Johnson (N. C.), 56 S. E., 922.

Bullard vs. Stewart (Tex.), 102 S. W., 174.

Meriwether vs. Quincy, &c., Ry. (Mo.), 107 S. W., 434.

Mt. Vernon Brewing Co., vs. Teschner (Md.), 69 Atl., 702.

Ray vs. M., K. & T. Ry. (Kan.), 133 Pac., 847.

Kibler vs. Caplis (Mich.), 103 N. W., 531.

C., B. & Q., vs. Todd (Neb.), 105 N. W., 83.

Nash vs. Classen, 163 Ill., 409, 45 N. E., 276.

Aulls vs. Young (Mich.), 57 N. W., 119.

Vogt vs. Cope, 66 Cal., 31.

Willard vs. Mellor, 19 Col., 534.

Fairly vs. Smith, 87 N. C., 367, 42 Am. Rep., 522.

Chaffee vs. U. S., 18 Wall., 516, 21 L. Ed., 913.

Harrison vs. Glover, 72 N. Y., 451.

Prout vs. Chisolm, 47 N. Y., Supp., 376.

Whelan vs. Lynch, 60 N. Y., 469.

B.

The schedules of quotations contain three columns: "Bid," "Asked" and "Quoted." Nothing apears to indicate the significance of the term "Quoted," whether it is a bid or the sum asked.

The question of offers for property, as competent evidence of value, has been the subject of considerable judicial discussion. Offers for real estate and property of a similar character have been uniformly held inadmissible. In condemnation proceedings evidence offered to prove offers for various purposes for the land in controversy was excluded, and in the discussion of the question the Court said:

> "Evidence of this character is entirely different from evidence as to the price offered and accepted or rejected for articles which have a known and ready sale in the market. The price at the Stock Exchange of shares of stock incorporations which are there offered for sale or dealt in is some evidence of the value of such shares. So evidence of prices current among dealers in those commodities which are the subject of frequent sales by them would also be proper to show value. This evidence is unlike that of offers to purchase real estate, and affords no ground for the admissibility of the latter."

Sharp vs. U. S., 191 U. S., 349, 48 L. Ed., 214.

Wood vs. Fireman's Ins. Co., 126 Mass., 316, 319.

Hine vs. Manhattan R .Co., 15 L. R. A., 591.

Parke vs. Seattle, 8 Wash., 78.

Santa Ana vs. Harlin, 99 Cal., 538.

St. Joseph, etc., vs. Orr, 8 Kan., 419.

Louisville N. O. & T. R. Co., vs. Ryan, 64 Miss., 399.

Minnesota Belt-Line Ry. Transfer Co., vs. Gluek, 45 Minn., 463.

Young vs. Atwood, 5 Hun, 234.

Lawrence vs. Metropolitan Elevated Ry. Co., 15 Daly, 502.

Waldo vs. Gray, 14 Ill., 184.

C.

The circumstances under which offers for stock would be admissible are well stated by the Court in Massachusetts, where it is said:

"An unaccepted offer, as an isolated transaction, is not competent evidence upon the question of value. But in a market regularly attended by buyers and sellers, an offer as well as a sale of an article of recognized uniform character, constantly bought and sold in that market so as to have a place upon the daily price current lists, may serve to show that the market value of that article did not then exceed the price at which it was offered. It is admissible because of its publicity, and the presumption of the presence of dealers ready to purchase, and who would have done so if the offer had been below the market value."

Whitney vs. Thacher, 117 Mass., 523, 527.

Wildes vs. Robinson, 50 App. Div. (N. Y.), 192, 193.

Republic Newspaper Co. vs. Northwestern Associated Press, 51 Fed. Rep., 377.

Lawrence vs. Metropolitan Street Railway Co., 15 Daly, 502.

Whelan vs. Lynch, 60 N. Y., 469.

Prout vs. Chisolm, 47 N. Y. Supp., 376, 381.

Chamberlayne on Evidence, Section 2, 175 G.

Morril vs. Bentley, 150 Iowa, 677, 684.

There seems to be very little controversy in the authorities over the proposition that where no market value is proved the value of the assets and of the dividends can be relied upon for the purpose of ascertaining the value.

> "The plaintiff is entitled to recover what would have been the market value of such preferred stock if it had been issued. If there be no market value, then the question is as to what would have been its actual value. The question therefore for the Jury to determine here was what would have been the real or intrinsic value of this stock, in view of the proved assets of the corporation."

Crichfield vs. Julia, 147 Fed. Rep., 73.

Redding vs. Godwin, 44 Minn., 355.

Reed vs. Metropolitan St. R. Co., 180 N. Y., 315.

Moffit vs. Hereford, 132 Mo., 513.

Henry vs. North American Ry. Const. Co., 158 Fed. Rep., 79.

Butler vs. Wright, 103 App. Div. (N. Y.), 463.

Leurey vs. Bank Baton Rouge, 58 S. R., 1022.

McDonald vs. Danahy, 196 Ill., 133.

White vs. Jouett, 197 Ky., 214.

Goodwin vs. Wilbur, 104 Ill. App., 45

D.

There are numerous cases also that hold that the market value is not the only criterion of value, that it is competent to prove that the actual value is either greater or less than the market value.

> "But the damages are not necessarily limited to the market value of the stock; its actual value may be re-

covered, and that may be shown by proof of the value of the property and business of the corporation, its good will and dividend earning capacity."

State vs. Carpenter, 51 Ohio State, 83.

Felker vs. Hyman, 135 S. W., 1128, 1130.

State vs. Sattely, 131 Mo., 464, 489.

Nelson vs. First Nat. Bank of Killingley, 69 Fed. Rep., 798.

"In such cases what is called the market price, or the quotations of the articles for a given day, is not the only evidence of value; the true value may be drawn from other sources." (Citing Pape vs. Ferguson, 28 Ind. App., 298.)

3 Sutherland on Damages (3d Ed.), 1894-5.

"The market price being only evidence of value, the law adopts it as a natural inference of fact and not as a conclusive legal presumption."

Pape vs. Ferguson, 28 Ind. App., 298, 306.

"The market price of an article is only a means of arriving at compensation; it is not itself the value of the article, but is the evidence of value. The law adopts it as a natural inference of fact, but not as a conclusive legal presumption. * * * The true value may be drawn from other sources, when it is shown that the price for the particular day had been unnaturally inflated."

Kountz vs. Kirkpatrick, 72 Penn. State, 376.

Lovejoy vs. Michels, 88 Mich., 15, 24.

Walker vs. People, 192 Ill., 106, 110.

Chicago vs. State Board of Equalization, 112 Fed. Rep., 607, 612.

Under a statute which required the stock of a corporation to be "assessed at its actual value," the Court said:

"They may take into account the business of the corporation, its property, the value of its assets, the amount and nature of its present and contingent liabilities, the amount of its dividends, and the market value of its shares of stock in the hands of individuals. They may resort to any or all of these as to them seems best, and they are not confined to one of them. They may take that test which they think will be most likely to give them the actual value of the stock, and they may disregard all the others. * * * * One mode of arriving at the actual value of capital stock of a corporation is to take what is sometimes called the book value, which is reached by estimating all the assets as they appear upon the corporate books, and deducting all the liabilities and other matters required to be deducted by law, and taking the balance as the measure of value for assessment. This seems to be a proper method for arriving at the value of the capital stock in the case of a corporation which is about to discontinue business, wind up its affairs and distribute its assets among its shareholders. * * * * Hence it would not be just for assessors, always or even generally, to take the book value of the capital stock of going corporations as the measure of value for the purpose of assessment."

People vs. Coleman, 107 N. Y., 541, 544.

In People ex rel Union Trust Company vs. Coleman, 126 N. Y., 433, the case last cited was discussed, and the distinction between the capital stock of the Company and the shareholders' capital stock was clearly made by the Court, the Court saying:

"And thus the two things—the Company's capital stock and the shareholder's capital stock—are essentially and in every material respect different. They differ in their character, in their elements, in their ownership and in their values."

And again:

> "When the actual value of capital and surplus was known and established in this case [107 N. Y.] by the party's own books no reference to the value of the shares could be permitted to lessen the valuation."

And they stated the general rule applicable to the facts in that case as follows:

> "And so I think the authorities either fairly permit or fully justify the conclusions which I have reached and which may be stated with reasonable accuracy thus: First, the subject of valuation and assessment is never the share stock but always the company's capital and surplus. Second, such capital and surplus must be assessed at its own value, and when that is correctly known as ascertained, no other value can be substituted for it."

Third, where that is unknown, the assessors may resort to the market value of the share stock; and fourth, or where the amount is disclosed, and they have sufficient reason to disbelieve the statement, they may resort to market value also.

In Cabbel vs. Cabbel, 111 App. Div. (N. Y.), 426, 429, the Court said:

> "I think that we cannot conclude that the inventory of the property of a going concern, made by the officers thereof, is a safe indication of the price that would be realized from a present sale thereof and a distribution thereunder. What property may, in the opinion of its owners, be worth, regarded as in use by a going concern, for inventory purposes, and what it would fetch if the concern were wound up upon sale in open market, may naturally present a great variance."

In that case the value was held to be the probable market value of liquidation, and the case recognizes the rule in People vs. Coleman, 107 N. Y., as applicable to the values of stock generally.

In Von Au vs. Magenheimer, 126 App. Div. (N. Y.), 257, 269, balance sheets at different periods were held admissible for the purposes of comparison in fixing the value of the assets, where it was contended that they were not appraised at their full value.

E.

The rule that would apply, where the State was the owner of a large majority of the stock in many of these corporations, in fixing its cash value upon the assumption that the stocks were to be liquidated as of January 1st, 1861, has been the subject of some discussion.

In Shaw vs. Holland, 1900, 2 Ch. Div., 305, the question was as to the price for which the directors should account for a large number of shares allotted to themselves at an under-valuation. The rule that they should account at the highest price which the shares attained while the stock was in their hands was invoked.

Upon the general question the judges participating in that case said:

Webster, M. R.:

"But I think that must be the amount which could have been obtained for the whole and not merely for a portion of the property so taken. * * * * * I adopt the view of North, J., that it would not be right to apply to large batches of shares the price which might have been obtainable for a small lot on a particular day."

Rigby, L. J.:

"But we must not erect that rule into an absolute principle of law, and say, 'if evidence is given of the sale of some shares at such a price during the period in question, it must be assumed that all of the shares of the Company, including those held wrongfully by the directors, might have been sold at that price.' That would be going too far. You must consider the circumstances

of the particular case, and I am not disposed to differ from the finding of the learned Judge that it had not been shown that the Company ever could have obtained in respect to all of the shares wrongfully held by the defendants the full price which was obtained in the market for some shares on a particular day. The number of shares held by the defendants was very large, and the throwing upon the market at any one time of all those shares might have influenced very greatly the price and brought it down considerably."

Collins, L. J.:

"When there is a real market, in which the things in question can to any amount be exchanged and sold for money, then it is a short cut to value to take the market price. But when these conditions do not exist, it is not a short cut to the value to take the price at which isolated lots could on given dates be sold. You would be practically applying to the shares a value which did not exist—a market value when in truth and in fact there was not a real market at all. The learned Judge has found in effect that the value claimed was not the market value, because he said that if these shares had been put into the market in any quantity they could not have been sold at all. Under the circumstances, it would be very unfair to take what is an artificial and fictitious standard of values as the true value of the shares. I think the time at which the damages are to be ascertained may be fairly taken as the time at which the wrong was done."

A similar question was raised in the matter of the fixing of the transfer tax in the Gould Estate, under a statute that required stocks that were "customarily bought and sold upon markets in New York to be appraised by ascertaining the range of the market and the average of the prices running through a reasonable period of time." An appraisal based

upon "reports of public sales of securities at the Exchange" was sustained, and upon the general question of the effect of placing the whole amount of stock upon the market, the Court said in that case:

> "It is claimed, however, that the rule should be so constructed that, when the value of large blocks of stock is involved, only the purchase and sale in markets of correspondingly large blocks of stock should be considered, upon the theory that such large blocks would necessarily sell at lower rates than small quantities of stock sold separately, and that throwing large blocks of stock upon the market all at once would have a tendency to produce a break in the market, and perhaps a total inability to get more than the mere nominal price offered for that stock. Whatever the rule may be as to the ascertainment of value in other cases than those covered by the Statute of 1891, we think no such construction can be given to that Statute as is contended for. The Statute, properly applied, will prevent the injustice suggested by this attempted construction. Under the construction contended for, the securities involved in this proceeding might have been shown to be of little or no value, by considering that forcing them upon the market in large blocks at one time would break the market, and make them practically unsalable at all."

In re Gould's Estate, 46 N. Y., Supp., 506, 512.

The authentic character of the quotations, the fact that so far as they go, they state the facts as they existed, taking into account the time which has elapsed since the transactions occurred, and all the other conditions involved, seems to be reasonably well sustained. This would be true if the deposition of Mr. Williams was excluded. Defendant insists that it should be excluded because it appears that the answer of the witness on the direct examination was written by a third person, and the answer thus written out was read by

the witness as his answer, and was therefore the result of prompting and not the unaided statement of the witness. If the cross-examination had stopped when that fact was developed, it would have presented a case that would have justified, and perhaps required, the exclusion of the deposition. The cross-examination was, however, continued until it clearly appeared that the witness had a clear and intelligent appreciation of the facts as to which he was testifying, and was not at all dependent upon suggestions from other parties, as to how he should testify, and substantially removed any such impression that might have been created by the irregular and unusual manner in which his direct examination had been conducted. There was no question as to the honesty of the witness, and he appeared to be able, without prompting, to state intelligently the facts as to which inquiries were being made. The weight to be given to these quotations, in ascertaining values, presents a much more difficult and doubtful question. The State was a large stockholder in all of the corporations. In many it held much more than a majority of the stock, and it may be fairly assumed that it dominated and controlled the policy of all of them. None of the stock held by the State was the subject of any quotations, which were all based upon minority stock.

It is a well known fact that there may be a wide difference in the market value of stock that controls and that which is controlled. The stocks were all inactive and not the subject of continuous daily sales in the open market. So far as appears, the sales were made by three firms of brokers, and private in their character, not in the open public market in the presence of competing buyers and sellers. The admissibility of quotations of "Bid" and "Asked," when it does not appear that the "Bid" and "Asked" were in the presence of competing buyers, is extremely doubtful, is not sustained by the weight of authority, and in any event is of slight value. "Last sales," which frequently occur, in the absence of any evidence as to when the "Last sales" occurred, is so uncertain

and indefinite as to be of little value. In no instance is the amount of the sale, or the circumstances and conditions under which it was made, given. The infirmity of these quotations, as reliable standards of value, is evidently fully appreciated by the plaintiff, as appears by the brief filed in its behalf, in which in discussing the value of the James River and Kanawha Company stock, and having reached the conclusion that its stock "had scarcely more than a nominal value in January, 1861," the brief refers to the stock quotations introduced by the plaintiff to establish the value of the same stock, showing a value of 18½ and 18 in January, 1861, (E-355) as follows: "Considering its [James River and Kanawha Company] condition, the market quotations of its stock in 1861 and 1863 were exceedingly high." The necessary inference being that the condition of the property, rather than the quotation, may be the more reliable standard of value.

PAR VALUE.

It is said that the par value of the stock involved is to be taken as presumptive evidence of its actual value; and my attention is called to some authorities that would seem to so hold. None of these authorities, however, give any reason for the suggested rule, and the rule seems to have been stated without any consideration whatever, so far as reasons or authorities are concerned. It had its origin in the Appeal of Harris, 12 Atl. Rep., 743, where, without giving the slightest reason therefor or citing any authority to sustain its conclusion, the Court said: "Prima facie, they [stock] must be charged at par, $100 per share." In that case it was claimed that they were worth only $30 a share, on the basis of their real or market value. On a rehearing in that case the value was reduced to $30 a share, the Court saying, "We have but little evidence of the value of this stock. It was conceded by appellants, however, that it was worth $30 per share."

In Alexander vs. Relfe 74 Mo., 495, the Court said: "The proper measure of damages is an amount equal to the face of

the draft with interest." The distinction between a draft and a share of stock as an evidence of value is obvious. A draft or a bond is a specific promise to pay; a share of stock, from the standpoint of a promise, is in no sense a specific promise to pay the par value of the share; at the very outside it can only be said to be a promise to pay the proportion that the stock is entitled to, of whatever residuum there may be, after the asets have been used in the liquidation of the indebtedness and liabilities of the corporation.

These two cases are cited in Brinkerhoff-Farris Trust and Savings Company vs. Home Lumber Company, 118 Mo., 447, 462, as authority for the proposition that "the plaintiff was entitled to the presumption that the stock was worth par in the absence of a market value, it being fully paid up, and *as its capacity to earn dividends was shown to be large*, and the burden was on defendant to show the market value was lower than par." It will be noticed that this involves a very important factor in addition to the mere naked par value.

In Moffit vs. Hereford, 132 Mo., 514, the Court said, citing Brinkerhoff-Farris Trust and Savings Company vs. Home Lumber Company, 118 Mo., 447:

> "The par value was prima facie the actual value of the stock."

In Tevis vs. Ryan, 108 Pac., 465, the Court said:

> "In the absence of any other evidence of value, the par value is presumptively the value of the stock."

Citing Appeal of Harris, 12 Atl. Rep., 743, and Brinkerhoff-Farris Trust and Savings Company vs. Home Lumber Company, 118 Mo., 447.

And in Walker vs. Bement, 94 N. E., 342, the Court said:

> "The par value of a share of stock in a corporation is prima facie its actual value."

Also citing Appeal of Harris, 12 Atl. Rep., 743, Brinkerhoff-Farris Trust and Savings Company vs. Home Lumber Company, 118 Mo., 447, and Moffit vs. Hereford, 132 Mo., 513.

In Critchfield vs. Julia, 147 Fed. Rep., 73, the Court cite Brinkerhoff-Farris Trust and Savings Company vs. Home Lumber Company, 118 Mo., 447. But that rule was not acted upon in that case, and therefore the remarks of the Court in relation thereto are dicta.

My attention is called, as sustaining this rule, to 2 Machen's Modern Law of Corporations, Section 1618, and to Mitcalfe's case, 13 Chan. Div., 169. Machen in discussing the case of wrong-doing directors who had appropriated stock to their own use, said:

> "The shares will be taken as against the misconducting director to have been worth par. That is their prima facie value, and the burden of showing a less value rests on the wrong-doer."

Citing the Mitcalfe case. In that case it appeared that "the public were giving the full nominal value for the shares," and the Court held that the obligation was on the director to show that he was not chargeable with their full value, when it appeared that the shares had been allotted to the director as fully paid up, in payment of the purchase money for the property of the corporation; that is to say, the director had received in payment for the property of the corporation the shares of the company as fully paid up stock. The distinction between that case and the rule suggested is too obvious for comment.

Clark and Marshall on Corporations, Vol. 2, page 1170, states the rule to be:

> "In the absence of any evidence as to the actual value it will be presumed that the par value was the actual value."

Citing Appeal of Harris, 12 Atl. Rep., 743, Moffit vs. Hereford, 132 Mo., 513, and Sedgwick on Damages, Sec. 257. Sedgwick on Damages states the rule, citing Appeal of Harris, 12 Atl. Rep., 743, Moffit vs. Hereford, 132 Mo., 514, Tevis vs. Ryan, 108 Pac., 461, and Walker vs. Bement, 94 N. E. 339. None of these cases, as I have stated, gives any reason for the rule; and the whole doctrine stands upon Appeal of Harris, 12 Atl Rep., 743, which likewise gives no reason for the rule, but assumes arbitrarily its existence. On the other hand, the rule was denied in Beaty vs. Johnston, 66 Ark., 529, the Court saying:

> "The contention of appellees that this value is, prima facie, the face value of the stock, * * * 12 Atl. Rep., 743. But the question was not discussed in that case, and the weight of authorities seems to be the other way."

It ought to be said that the Court in this case cites no authority for its last assertion.

As to the general proposition involved, in Fogg vs. Blair, 139 U. S., 118, 35 L. Ed., 104, the head note says:

> "The Court in the absence of averment or proof to the contrary will not assume that it was worth par or had substantial value."

In Griggs vs. Day, 158 N. Y., 1, the Court, in an action for conversion of stock, in determining the value ignored the presumption of par value, and said:

> "We are thus left without any evidence upon which the value of the stock can properly be determined within a reasonable time after its conversion. The rule in such cases is that nominal damages only can be awarded."

This case is cited with approval in Warren vs. Stikeman, 84 App. Div. (N. Y.), 610, where the Court said:

> "This [par value] cannot be said to afford any such evidence of value as will support a judgment such as the

one in this case for its conversion; the most that could be recovered under the state of proof is nominal damages."

The true value and not the nominal value is the rule.

Bull vs. Douglass, 4 Munford, 303.

It is certainly a matter of common knowledge that stock is repeatedly issued on a basis that has very little connection with its intrinsic or actual value. The over-issue of stock under such circumstances is well understood by all to be one of the most disturbing factors in existing industrial, commercial and economic conditions, and any assumption to the contrary, in my judgment, is wholly without foundation in fact.

The authority of this rule is at least extremely doubtful, but under the circumstances of this case it is hardly necessary to determine that question, as the defendant concedes that it is inapplicable to one of the largest items involved. The State had stock in the James River and Kanawha Canal Company, of the par value of $10,400,000, and it was paid for in cash, a fact that is certainly much stronger as an indication of value than the mere par value of the stock. The defendant concedes that the presumption of actual value arising from the par value of the stock or the payment in cash at par could not reasonably apply to this item, as "so much time has elapsed, and the evidence of the actual value of this stock has become so obscure;" and it voluntarily and arbitrarily reduced the par 75 per cent., and only claimed 25 per cent. of the nominal par value, thus conceding that there are circumstances at bar to which this rule, if it is a rule, can have no proper application.

It is objected that the returns or reports, relied upon by defendant as showing the facts upon which it predicates the book value and the assets, liabilities and earnings of the various corporations, are not competent for that purpose; and my attention is called by both parties to the authorities re-

lating thereto. In the case of railroads and canal and navigation companies, the returns were made on oath, pursuant to a statute of Virginia (Act March 15, 1856) (p. 646) which required a statement "of its condition," supplemented by a great mass of detail, to be made; and the Board of Public Works were required to print the reports as a "document;" in the case of banks, the returns were made pursuant to a statute which required a return on oath, showing "a statement of the condition of the bank," to be supplemented by the details involved. (Code of Virginia 1849) (712) These returns were also to be published in two newspapers in the City of Richmond. The State was a stockholder in all of these corporations. By her statute she required the returns to be made on oath for the information of the public. She published them for public information as true, and the publications are now a part of her public records. She is a party to this litigation. I think that her statements, thus carefully and publicly made, are admissible not only as public records, but as her admissions against her, not as conclusive, but, in the absence of any evidence to the contrary, sufficient as against her to establish the facts thus asserted by her to be true. The weight to be given to the book value as shown by the defendant requires careful consideration. As claimed, it is the result of an exact mathematical calculation, based upon the figures found in the reports made to the State. It assumes that the specific sums mentioned can be realized from all of the assets, without loss, and that the corporation could be liquidated without expense. When Virginia is charged with these stocks, she is in effect required to liquidate them at the prices fixed, and under the peculiar circumstances of this case, I think the book value should be treated as the liquidating value. It is morally certain that no one would purchase these stocks on the basis of book value without making a reasonable allowance for the expense of liquidation, to say nothing of any loss that might be sustained in realizing upon various items making up the assets, as to the value and character of which, outside of the return, there is no evidence. That substantial loss on that account would undoubtedly occur, in any method

of liquidation, is reasonably certain. The amount of this loss it is impossible to ascertain or estimate. Mr. Hillman, defendant's expert, admitted that it would cost at least 5 per cent. to liquidate any of these corporations (622), and that to that extent at least the book values upon which he relied did not represent the "actual cash market value." (623)

For these reasons it seems to me when values are fixed upon these various stocks which, in a sense, is upon the basis of a compulsory liquidation on the part of Virginia, that from the book values computed as a mathematical result there should be deducted at least 5 per cent., the conceded cost of liquidation, and as to which the computations show an excess of the actual cash market value. For these reasons, in making my computations and in reaching my valuations on so-called book value only, I deduct in each instance the 5 per cent. as the cost of liquidation. In my judgment this deduction does not by any means cover what would be represented by the actual loss in liquidation, especially in connection with the railroad corporations. So that it seems to me that this deduction is conservative and reasonable.

While it may be regarded as settled that there are circumstances under which all of the various factors are to be considered in reaching the fair value, I have not found any case that states how these factors are to be treated in such a case, or what weight is to be given to either or any of them in reaching a result. The facts disclosed by the record which are essential for the purpose of reaching a satisfactory conclusion as to values January 1, 1861, are meagre and inadequate. If it had become necessary to find the values June 20, 1863, these difficulties would have been greatly increased, as the facts are so indefinite and uncertain as to make it well nigh impossible to reach a satisfactory conclusion.

FOURTH. Attention is called to the fact that all of the statistics and computations that appear in the various schedules are conceded to be correctly and accurately stated, so that no question arises in their application as to their accuracy.

CLASS A.

The defendant claims to be allowed under this class the sum of $1,102,036.16 (1-E.) This sum is made up of:

Balance of State funds	$23,985.18	
Board of Public Works	5,958.28	
Commonwealth fund	252,842.67	
These three aggregating		$282,786.13
Sinking fund		819,250.03
		$1,102,036.16

Approximately the average ordinary expenses of the Government of Virginia for the decade preceding December 31st, 1860, were $2,038,163.31 per annum.

How much of the ordinary expenses, if any, for the year ending December 31st, 1860, were unpaid does not appear. If any were unpaid, the only fund on hand available for their payment in the treasury of the State of Virginia was the aggregate of $282,786.13. This sum was not accumulated for and dedicated to the payment of the debt, and I think some allowance should be made for liabilities and contingencies outside of the public debt; otherwise Virginia would be required to pay every dollar in her treasury to the reduction of the public debt, and leave other contingencies and liabilities involved in her ordinary expenses unprovided for.

I therefore disallow the sum of $282,786.13, and allow the sinking fund of $819,250.03 as a proper credit for the State of West Virginia, as that sum was accumulated for and dedicated to the payment of the public debt.

I allow **$819,250.03.**

SUMMARY—CLASS A.

Sinking Fund	$819,250.03

CLASS B.

RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY.

2,752 shares of the capital stock, of the par value of $275,200.

Amount claimed in answer, "at least $275,200."

The defendant claims $150 a share, or $412,800. (2-E, 66-E.)

Stock quotations:

1860		
Nov. 2,	80	Sales.
Nov. 9,	80	Sales.
Dec. 14,	76½	Last Sales.
1861		
Jan. 4,	76½	Last Sales.
Jan. 11,	77	Last Sales.
Jan. 18,	77	Last Sales.
Jan. 25,	77	Last Sales.
Feb. 1,	77	Last Sales.
Feb. 8,	77	Last Sales.
Feb. 15,	77	Last Sales.
Feb. 22,	77	Last Sales.
Mar. 1,	78	Last Sales.

The amount of stock involved in all of these quotations not being given. (334-E.)

$150 claimed to be the book value, predicated upon a surplus of $505,403.22 on March 31, 1860; and a surplus of $562,819.05 on March 31, 1861, the average showing practically $150 as of January 1, 1861.

This road was incorporated in 1835. (O. R. 965.)

It had paid in dividends since the commencement of the work to March 31, 1861, $1,099,280.64. (9-E.)

Dividends for eleven years ending 1860, averaging per year 5.09 per cent., part of which were paid in bonds. (2-E.)

This capitalized would show a value of $84.83 per share.

Increased in book value from 144.2 on March 31, 1859, to 150.4 on March 31, 1861.

Extending over the years 1848, 1849, 1852, 1853, 1854, 1855, 1858, 1859, 1860 and 1861, expenditures aggregating $132,-843.93, largely in the nature of improvements, were charged to operating expenses, (753) indicating a conservative policy as to depreciation.

Hillman admits that the book value is of more or less doubtful value in determining the actual value. (455.) No effort was made to show the physical condition of this road.

The dividend for 1860 was 7 per cent. No dividends were paid upon this stock in 1856, 1857 and 1858, and one-half of the dividend in 1854 and the whole of the dividend in 1855 were paid in bonds. Estimated at 7 per cent. this would increase the surplus $315,000, and would result in a corresponding increase in the book value. I do not think the stock quotations as reliable an indication of value as the actual "conditions." The book value and the earning value are so far apart that I do not take the (mathematical) book value as the

standard, but combine the two, 150.04 plus 84.83 equals 234.87, one-half of which is 117.43. 2,752 shares at 117.43 is $323,-167.36.

I do not deduct 5 per cent. to reach the "cash market value," as I do not use the book value as the standard of value.

I allow ..... $323,167.36.

SUMMARY—CLASS B.

Richmond, Fredericksburg & Potomac Railroad Company $323,167.36

CLASS C.

1. ORANGE & ALEXANDRIA RAILROAD COMPANY.

STOCK.

17,490 shares, at $50., par value, $874,500.

Loan $398,670.60. (13-E.)

Amount claimed in answer, $1,156,210.98.

The defendant claims that this stock had a value of $53.32 per share, in the aggregate $932,566.80; and that the loan was worth par. The value of the stock was based entirely upon its book value.

There were no quotations on this stock in 1860 or 1861.

No trial balance for this road is shown since 1856.

The book value in 1856 was 50.27; in 1860, 53.32. (14-E.)

The profits were:

In 1856,	$7,571.28
In 1857,	61,441.15
In 1858,	34,016.74
In 1859,	19,035.67
In 1860,	28,242.34
In 1861,	263,909.85

The surplus increased from $63,057.80 in 1857, (14-E.) to $135,515.49 in 1860.

It appears that this road paid in dividends upon its preferred stock:

In 1857,	$5,954.63
In 1858,	2,138.71
In 1859,	6,658.35

and made an average profit for five years ending 1860, of $30,061.45.

Nothing appears in the record to show how much preferred stock it had or at what rate these dividends were declared.

No dividends appear to have been declared in either 1860 or 1861. (15-E.)

$31,604.09 appears to have accrued in dividends on the State's holdings prior to January 1, 1861. (46-E.) These dividends were evidenced by dividend bonds. (370-E.) It does not appear when they were made or upon what they accrued, or whether they were upon preferred stock or upon common stock.

There is no mention made in the record of any dividends except the four items above referred to, and there is nothing to show that any dividends except these four were paid at any time during the history of the road.

Bonds having been issued for the $31,604.09 indicates that at the time those dividends accrued the road was not in a position to pay them in cash.

This road was incorporated about 1848. (O. R. 964.)

In a settlement made in 1872 Virginia appears to have received par for this stock and the balance due on the loan. (18-E.)

A large portion of the amount that was paid in the settlement appears to have been State bonds, and interest on the same. (18-E.)

The report of the president showed that "the net earnings of the road, over its working expenses proper, for the half year amount to the sum of $138,822.22" preceding September 30, 1856. (347.)

The average profits for five years ending and including 1860 were $30,061.45. It does not appear that anything is allowed for depreciation in any of the railroad stock estimates. This capitalized at 6 per cent. would show a value of $501,024.16, or 24.57 per cent. of $2,039,603.73, the total capital stock in 1860.

There is such a wide difference between the mathematical book value and the value on an earning basis, that I do not feel justified in taking the book value as the standard of value, and I reach the value by combining the book and the earning value of 24.57 per cent. of $50 a share, which is $12.28. Add to this the book value of $53.32, we have $65.60, one-half of which is $32.80, 17,490 shares at $32.80 is $573,672.

I allow ..... $573,672.

I do not deduct 5 per cent. from the book value in this computation to get the actual cash market value, as I do not use the book value as the standard of value.

If there is any basis for the contention vigorously insisted upon by the plaintiff that the value of all of these corporations was practically destroyed by the end of the war in 1865, their subsequent financial history can give no aid in determining their value January 1, 1861. The road was being operated at at a profit. Its loan must have been good.

I allow ..... $398,670.60.

2. RICHMOND & DANVILLE RAILROAD COMPANY.

12,000 shares, par value $100, cost $1,188,598.50.

Loan $565,803.34. (13-E.)

Amount claimed in answer $1,653,423.04.

Amount claimed in Exhibit, $1,632,777.76. (13-E.)

Quotations for this stock in 1860 and 1861 are: (339-E.)

1860		
Nov. 2,	60	Sales.
Nov. 9,	60	Last Sales.
Nov. 16,	60	Last Sales.
Dec. 14,	58	Last Sales.
1861		
Jan. 18,	57	Sales.
Jan. 25,	57	Last Sales.
Feb. 1,	57	Last Sales.
Feb. 8,	57	Last Sales.
Feb. 15,	57	Last Sales.
Feb. 22,	57	Last Sales.
Mar. 1,	55	Last Sales.

No balance sheet is shown.

Computations are based on balance sheet, not introduced, of 1856.

Exhibit shows profit:

In 1856,	$197,518.90
In 1857,	139,489.12
In 1858,	154,305.76
In 1859,	182,527.84
In 1860,	225,068.98 (19-E.)

Average	179,782.12
Capitalized	2,996,368.67

In 1859 a dividend of $79,239.90, and in 1860 of $79,247.90, 4 per cent. in each instance, appear to have been paid or allowed for in computation. (19-E.)

The president's report for 1859-1860 stated:

> "Both the financial condition of the country and of the Company in the opinion of the Board make it unwise to declare a dividend at this time, but they trust at no distant date to declare semi-annual dividends of two per cent." (376.)

The Board of Public Works in 1859, with reference to this road stated:

> "And the generally prosperous condition of its affairs in the opinion of the Board justifies the declaring of a dividend of four per cent. upon the capital stock of the Company. This dividend in the aggregate amounts to nearly $80,000."

Report made November 29, 1859. (378.)

This road was incorporated in 1847. (O. R. 9651.)

It cost up to September 30, 1864, $5,906,566.93. (271-E.) It paid in dividends up to January 1, 1864, $495,046.61. How much of this accrued after January 1, 1861, does not appear. (273-E.)

Capital stock 1860, $1,981,197.50. (19-E.)

It had an indebtedness September 30, 1865, of $2,378,222.74. (270-E.)

The average profit of this road for the five years ending and including 1860 was $179,782.12. This capitalized would

give $2,996,368.67. The profits increased from 1856 to 1860, $27,550.08, and the profit for 1860 was $45,286.86 in excess of the average, showing a marked increase in the earning value, and that the road was prosperous.

For a stock which on the average for six years earned 9 per cent. profit, a profit of about 11 per cent. in 1860, and increased its profits from $139,489.12 in 1857 to $225,068.98 in 1860, or $85,579.86, it seems that a quotation of 57 or 60 is "exceedingly" low.

I do not think the stock quotations furnish as reliable an indication of value as the financial condition of the Company disclosed by the record.

I think the "cash market value," 137.37, minus 5, 132.37, is the best estimate I can make of the value of this stock.

I allow .....$1,588,440.

This road was being operated at a profit. Its loan must have been good.

I allow .....$565,803.34.

3. RICHMOND & PETERSBURG RAILROAD COMPANY.

3,856 shares at $100., $385,600.
Dividend bonds $33,408. (13-E.)

Amount claimed in answer $578,404.13.

Defendant claims a value in 1860 of $121.86 per share, $469,892.16. (13-E.)

Stock Quotations:

1860

Nov. 2, ... 64 Last sales.
Nov. 9, ... 64 Last sales.
Nov. 16, ... 64 Last sales.
Dec. 14, ... 64 Last sales.

1861

Jan. 4, ... 64 Last sales.
Jan. 25, ... 60 Last sales.
Feb. 1, ... 60 Last sales.
Feb. 8, ... 60 Last sales.
Feb. 15, ... 60 Last sales.
Feb. 22, ... 60 Last sales.
Mar. 1, ... 57½ Last sales. (337-8-E.)

No balance sheet is produced.

Computation is based upon trial balance of 1856, which is not produced. (22-E.)

Profits

In 1856,	$162,881.32	
In 1857,	28,601.86	
In 1858,	52,312.61	
In 1859,	64,508.33	
In 1860,	69,087.87	(22-E.)

Dividends were declared:

In 1857,	$48,205.00	

(This dividend exceeded the profits for that year by the sum of $19,603.14)

In 1858,	48,730.00	
In 1859,	48,880.00	
In 1860,	48,880.00	(22-E.)

Dividend bond of $33,408 was paid November 7, 1861. (23-E.)

The dividends for four years averaged nearly six per cent. This road was incorporated 1836 (O. R. 966).

There is nothing in the record to show that any dividends were paid other than those above referred to.

The exhibit shows (22-E) book value:

For 1856,	$127.20
For 1857,	117.17
For 1858,	117.58
For 1859,	119.44
For 1860,	121.86

This road earned an annual profit on an average for four years, ending and including 1860, of $53,627.66. I have

excluded the larger profit of $162,881.32 for 1856 on a capital of $786,100.00, or more than 20 per cent., as it seems to have been very unusual and is unexplained. The profit for 1860 was $69,087.87, on a capital of $835,750, or more than 8 per cent. $53,627.66, capitalized, is $893,794, or 106.95 per cent. of the capital for 1860. All of the quotations for this stock are "Last sales," without any information as to when the "Last sales" took place, and at from 64 to 57½. I do not feel at liberty to take these "Last sales" as against the condition disclosed in the record. As the value as shown by the earnings is less than the book value, I have combined the two, and the result is a value of $114.40.

I allow $441,126.40

The dividend bonds were worth par.

I allow ..... $ 33,408.00

4. VIRGINIA CENTRAL RAILROAD COMPANY.

Stock,	$1,891,670.68
Loan,	90,032.82
Dividend bonds,	143,508.00

Amount claimed in answer $321,458.17.

Amount claimed in Exhibit $2,481,115.26 (13-E.) $131.16 per share.

The cost to the State of stock owned by her was at

Sept. 30, 1860,	$1,891,670.68
Dec. 30, 1860,	1,927,382.57

the State having paid between those two dates to the Company on account of her subscription, the sum of $35,711.89, and it so appears on the books of Virginia. (12a-E.) (See Record, p. 386-387, Hillman's testimony.)

Stock Quotations:

1860

Nov. 2,	50 Sales.
Nov. 9,	50 Sales.
Nov. 16,	50 Last sales.
Dec. 14,	50 Last sales.

1861

Jan. 4,	50 Last sales.
Jan. 11,	47½ Last sales.
Jan. 18,	47½ Last sales.
Jan. 25,	47½ Last sales.
Feb. 8,	47½ Last sales.
Feb. 15,	47½ Last sales.
Feb. 22,	47½ Last sales.
Mar. 1,	45 asked. (336-E.)

Exhibit shows profits:

In 1856,	$381,175.68
In 1857,	178,632.72
In 1858,	158,030.15
In 1859,	280,591.86
In 1860,	267.681.51

Dividends appear to have been paid:

In 1859,	$127,246.07
In 1860,	153,304.46 (24-E.)

Interest on dividend bond of $5,959.80 appears to have been paid January 19, 1861. (46-E, 370-E, 26-E.)

There is nothing in the record to show that any other dividends were ever paid.

This road was incorporated under the name of the Louisa Railroad in 1837.

The average net earnings of the road, annually, for four years, to and including 1860, were $221,234.06. I have excluded the net earning for 1856 of $381,176.68, or over 12 per cent. on the then capital, as that appears to have been unusual. The net earnings for 1860 were nearly 9 per cent. of the then capital; $221,234.06, capitalized, is $3,687,234, or 116.95 per cent. of the capital for 1860. I disregard the stock quotation and the financial history subsequent to 1860, for the reasons already given. The value on the net earning basis is less than the book value. I do not deduct 5 per cent. from the book value of this stock for its "cash market value," as I do not use the book value as the only standard of value. I reach the value by combining the book and the earning value. 131.16 plus 116.95 equals 248.11; one-half is 124.05. $1,927,382.57 at 124.05 is $2,390,918.08.

I allow $2,390,918.08

The road was being operated at a profit. Its loan and dividend bonds were good.

I allow, for loan,	$90,032.82
I allow, for dividend bonds,	$143,508.00

5. BLUE RIDGE RAILROAD COMPANY.

It is unnecessary to analyze the details involved in this item. It is conceded that the sum of $625,348.08 was paid for this road in bonds in April, 1870, being the amount agreed upon by Commissioners representing both States. In the brief filed by West Virginia, it is said "and we are inclined to the opinion that West Virginia's conduct in this behalf confines us to 23½ per cent. of the $625,348.08 so ascertained by the Commission," which I understand to be an admission that that value shall be fixed. The plaintiff contends that as the bonds were then selling at 69½ to 70¼ this item, which in effect is a credit to West Virginia, should be reduced to that extent. These bonds were taken at par in making up the aggregate with which West Virginia is charged, and when she is to receive a credit represented by the same bonds I think they should be taken at the same rate. They should be credited on the same basis that they are charged. The payment was made in 1870, and the value should be fixed at such sum as, at January 1, 1861, would amount in April, 1870, to the sum for which the road sold, viz., $402,153.10, at which sum I value the road.

I allow $402,153.10

6. ALEXANDRIA, LOUDOUN & HAMPSHIRE RAILROAD COMPANY.

Stock $993,248.

Amount claimed in answer $68,044.51.

There are no stock quotations.

There is nothing to show that any dividends were paid or that any profits were earned, or anything about the physical character of the road tending to indicate its value.

It was incorporated in 1853. (O. R. 959)

The only fact tending towards showing value of this stock January 1, 1861, is its cost and the sale of the stock in November, 1867, by the State for $50,862.40. (28-E.)

97.64 per cent. of this value, or $49,662.05, is testified to by the witness Hillman, as the value as of January 1, 1861. (150)

> "Mr. Holt: The sixth item on the main exhibit, Defendant's Exhibit No. 3, is Alexandria, Loudoun & Hampshire Railroad stock, $993,248, with a value indicated thereon as of January 1, 1861, of $49,662.05; and in support thereof we file the supporting or underlying exhibit marked on the right hand corner Hillman Exhibit No. 3, Asset C-6, and mark the same as Defendant's Exhibit No. 3, Asset C-6."

The counsel for West Virginia, after it had been developed upon cross-examination that a value of $1,017,248, being the total expenditure up to June 20, 1863, was stated as the value in the schedule for 1863, and without any additional or other testimony tending to show the value, changed the claim in this instance from $49,662.05 to $993,248. (416)

The value of this stock was stated in the answer to be $68,044.51, evidently predicated upon the amount that the

road brought, $49,662.05, entirely ignoring the cost of the stock at January 1, 1861, $993,248.

This change in claim appears to have been made purely for the purpose of making the schedule of 1861 consistent with the schedule of 1863, without any suggestion that there was any fact that was not taken into account when the value was placed upon this stock in the original exhibit and by the testimony of the witness Hillman. Under these circumstances I find the value of this stock to be such sum on January 1, 1861, as would produce $49,662.05 November 25, 1867, viz., $35,096.85.

I allow $35,096.85

7. WINCHESTER & POTOMAC RAILROAD COMPANY.

Loan $83,333.33.

Amount claimed in answer $83,333.33.

This loan appears to have been paid in full with interest in September, 1873. (29-E.) (Master's Original Report, p. 64.)

Plaintiff claims that this sum was paid in bonds and should be reduced to the market value of the bonds. For reasons hereafter given in connection with the claim against the United States Government, (Claim 17, Class C) this claim of market value is disallowed.

I allow $83,333.33

8. VIRGINIA & TENNESSEE RAILROAD COMPANY.

Loan $1,000,000.

Amount claimed in answer $992,030.32.

Amount claimed in Defendant's Exhibit $886,685. (31-E.)

This loan was secured by a mortgage upon the railroad. (421.)

There is nothing in the record to show whether or not the Virginia & Tennessee Railroad Company was responsible and able to pay this loan. All that appears in that regard is the fact that the stock of this Company was paid in, and, as well as this $1,000,000 loan, was transferred to the Atlantic, Mississippi & Ohio Railroad Company, along with other items, which are treated under a subsequent head; (164-E.) and that one dividend of about ½ of 1 per cent. was paid in 1864, the only dividend for nearly thirty years. (227-E.)

It appears that, beginning with June 19, 1863, and ending September 11, 1863, five items aggregating $886,685 purport to have been paid on account of this loan; (31-E.) and these payments were subsequently repudiated by the State of Virginia, upon the ground that the Second Auditor was alleged not to have any authority to receive the payments, payments evidently having been made in Confederate money. So far as the legal right of the Second Auditor to receive payments under such circumstances is concerned, his authority would seem to be as full and complete as that of the Auditor.

The Act of Virginia of 1860, Chapter 45, page 266, Section 2, after providing for the payment of money into the public treasury, says:

> "A warrant shall be obtained from the Auditor of Public Accounts or the Second Auditor, as the case may be," etc.

And then follow provisions as to the manner in which the funds shall be given to the treasurer. The power of the Auditor and of the Second Auditor seem to be equal.

In my view of the case, however, it is not necessary to determine whether or not these were not valid payments. They still remain, so far as the record shows, in the treasury of Virginia. Payments that were made upon this loan have some tendency to show that it was at least of the value at that time of the amounts paid. While defendant claims, by its exhibit No. 3, (31-E.) that $886,685 was paid on account of this loan, by its exhibit AA (264-E.) it also shows that the $1,000,000 was still in existence as a special debt September 30, 1873.

This loan is treated in the sale to the Atlantic, Mississippi & Ohio Railroad Company as of "no monetary value."

The only evidence relied upon by the defendant for the purpose of establishing the value of the loan is that these sums aggregating $886,685 were paid thereon. In order to determine the extent to which they demonstrate that value they should be reduced to a gold basis, as they were paid in Confederate money when it was largely depreciated.

Bringing the items to their fair value on a gold basis and as of January 1, 1861, they are as follows:

		Value at Jan. 1, 1861
June 19, 1863, $200,000, Confederate money 7½, (O. R. 647)	$26,666.66	$23,289.66
June 30, 1863, $300,000, Confederate money 7½, (O. R. 647)	40,000.00	34,782.61
Aug. 6, 1863, $100,000, Confederate money 12½, (O. R. 647)	8,000.00	6,926.40
Aug. 7, 1863, $100,000, Confederate money 12½, (O. R. 647)	8,000.000	6,926.40
Sept. 11, 1863, $186,685, Confederate money 12½, (O. R. 647)	14,934.80	12,874.83
	$97,601.46	$84,799.90
I allow		$84,799.90

9. SOUTH SIDE RAILROAD COMPANY.

Loan $800,000.

Amount claimed in answer, $91,897.66.

Nothing appears in the record to show the value of the South Side Railroad Company's stock, excepting as it may be inferred from the fact that it was one of the items included in the sale to the Atlantic, Mississippi & Ohio Railroad Company, (164-E) reference to which is made hereafter. This loan never was paid. (430) It does not appear that there was paid on this loan any interest that accrued after January 1, 1861.

In the original schedule filed for 1861, under the heading, "Statement of Par and Value on opening of Business January 1, 1861, on stock and loans as per Schedule 'C,'" the defendant entered this loan, but entered it as of no value. (13-E.)

> "By Mr. Harrison.
> "Q. Now I come to the next item, No. 9, Defendant's Exhibit No. 3, page 13 of the printed record as follows: South Side Railroad Company loan, $800,000. What value do you put upon that loan in your schedule under date of January 1st, 1861? A. I have entered no value opposite it.
> "Q. Then according to your schedule it had no value on that date; that is correct, is it not? A. Yes, sir." (428)

It appeared then that the schedule for June, 20, 1863, placed the par value upon this loan, and for that reason the defendant changed the schedule of 1861 from nothing to $800,000; although the witness Hillman, testifying in chief, gave it no value.

This loan of $800,000 makes a part of the items claimed in defendant's exhibit No. 6 A. (57-E.) Under the heading

of value, however, no sum is carried out; and the following entry is made, "No claim—too indeterminate." In defendant's exhibit No. 3, it is stated, "The loan itself, Asset C 9, was never paid." In defendant's exhibit AA, (260-E) it appears under date of September 30, 1873, as a special debt of the South Side Division, $708,102.34.

The only thing in the record that tends to indicate value, other than the sale to the Atlantic, Mississippi & Ohio Railroad Company, in which it is referred to and given no monetary value, is the payment of certain items beginning November 10, 1862, and ending September 16, 1863, aggregating $264,500. (32-E.) According to the exhibits these were paid on account of interest, and they are the only payments that appear ever to have been made on account of this loan. These items of interest are all treated under Schedule D. It is clear that a debtor may struggle along and pay the interest on a loan, and at the same time be entirely unable to pay the principal. In this case no interest was paid after January 1, 1861. At that time there was a balance of interest due of $264,500, which was paid in a currency that was worth only $43,988.88. So that the ability of this road to pay even interest seems to have been considerably impaired at that time. There is nothing to show whether the South Side Railroad was able to pay the principal January 1, 1861. So far as the facts in the record go, the indications are all to the contrary.

The loan was treated as worthless in the sale to the Atlantic, Mississippi & Ohio Railroad Company, and was finally wiped out, without any payment, by the foreclosure of the mortgage given by that Company.

Taking into account all the facts disclosed in the record, I find that the loan was of no value January 1, 1861.

10. NORFOLK AND PETERSBURG RAILROAD COMPANY.

Loan $300,000. (13-E, 33-E.)

Amount claimed in answer $165,024.49.

Amount claimed in exhibit first filed $137,000. (13-E.)

Amount claimed in revised exhibit $300,000. (12a-E.)

There is nothing to show the financial responsibility of the Norfolk and Petersburg Railroad Company or the value of its stock, other than that it paid 3 years of dividend on prefered stock (1863, 1864 and 1865) of $82,500. (227-E.) and what appears from the fact that it was included in the sale to the Atlantic, Mississippi & Ohio Railroad Company. (56-E, 164-E.)

$137,000 is the value proved on the direct examination.

> "Mr. Holt: Coming now to No. 10, upon the main Defendant's Exhibit No. 3, we have Norfolk & Petersburg Railroad loan, indicated there as $300,000, and likewise indicated thereon as of the value of January 1, 1861, of $137,000; and file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-10 and Asset D-9, and in the left hand corner, Class C and Class D, and mark the same Exhibit No. 3, Asset No. 10." (151,152.)

The method by which this sum is reached is by ascertaining that $163,000 is stated to be the unpaid balance of the principal, in the sale to the Atlantic, Mississippi & Ohio Railroad Company. (56-E, 164-E.) The difference between that and $300,000, being $137,000, is fixed as the value of this loan. (33-E, 146-E.)

This loan of $300,000 is one of the items in Defendant's Exhibit No. 6-A (57-E.) and under the column of value

nothing is caried out, and this statemenet is made, "No claim—too indeterminate." In Defendant's Exhibit AA, (256-E.) under date of September 30, 1873, this item of $163,000 in the sale to the Atlantic, Mississippi & Ohio Railroad appears as a special debt of $136,591.64.

In answer to the inquiry as to how the $137,000 was paid, Mr. Hillman says:

> "I do not know. There is nothing in the books showing that payment; it is only an inference from the fact that when this loan was turned over to the Atlantic, Mississippi & Ohio it was turned over as the balance of the loan, $163,000. The inference is unavoidable therefore that $137,000 of it must have been paid in the interim. There is no entry that I can find showing in any way that payment." (437)

This is the only element of value relied upon that appears in the record with reference to this loan. This railroad appears to have been organized in 1853. (O. R. 963.)

It appears, however, that a report to the Senate which the witness referred to in his schedule, (34-E.) and which he had seen and the contents of which he knew, shows how and when the $137,000 was paid in bonds.

> "Q. As a matter of fact, his report applied strictly to that loan of $300,000 this portion of it, this portion of the loan of $300,000 and upon this loan his report shows that the company paid as follows: 1867, new registered stock, $65,436.90; 1868, old registered stock, $60,500; new coupon bonds cancelled, $7,500; 1860, old registered stock, $8,000. fraction new, $87.59 new registered stock $10,000. footing up $151,524.49 as shown in your notation, with this accompanying note found in Stegar's report, the coupon bonds paid by the company, $7,500 were cancelled; the balance due on the loan was merged

in the contract between the State and the Atlantic, Mississippi & Ohio Railroad Company for $4,000,000. which is still due and unpaid. So it appears then that the $137,000. was paid in the bonds of the company? A. Do I understand you to say bonds of the company or bonds of Virginia?

"Q. I mean to say bonds of Virginia of course. A. I am perfectly willing to accept as a fact that the payment was made in bonds." (439.)

This was paid, approximately, $68500. in 1867, and $68,500. in 1868.

The present value of $68,500. in 1867, as of January 1, 1861, is $50,367.65.

The present value of $68,500. in 1868, as of January 1, 1861, is $48,239.44. Total of $98,607.09.

In the absence of a single fact or circumstance that was not known and specifically referred to when the witness made his original schedule claiming a value of $137,000., (13-E) and the exhibit proving the same was produced in evidence, this claim was raised to $300,000., (12a-E) under the same conditions, apparently for the sole purpose of making 1861 consistent with 1863.

"Q. Do you charge Virginia with any value for stock held here in the Norfolk & Petersburg Railroad Company on January 1st, 1861? A. No, sir; I have made no charge against the Norfolk & Petersburg Railroad for stock held by the State of Virginia.

"The Master: You mean you have made no charge against Virginia?

"The Witness: Against Virginia for stock held by Virginia in the Norfolk & Petersburg Railroad.

"Q. Did you make any charge against Virginia for stock of the Norfolk & Petersburg Railroad Company, June 20, 1863? A. Yes, sir, I did.

"Q. To what extent? A. $1,199,970.

"Q. Why did you charge Virginia with that valuation of stock in this road June 20th, 1863, and make no charge against her on the same account January 1st, 1861? A. That was in error. There should have been a charge made against her for the par of that stock on January 1st, 1861." (439.)

If there was a real expectation that such a change of claim would be seriously entertained, this was a serious "error." I am not able to find that the claim of West Virginia was actually increased by the sum of $1,199,970. (33-E.) It seems that one item of $94,500. of interest was paid January 11, 1864, and it is claimed that the proportion of that on January 1, 1861, would be $36,000. (33-E.)

Confederate money at that time was worth only 20 to 1, and as indicating value a $36,000 payment should be divided by twenty, making $1,800. instead of $36,000. Reduced to January 1, 1861, this would be $1,525.42.

The aggregate of the items in the sale to the Atlantic, Mississippi & Ohio Railroad Company is $4,689,436.41. (538) $500,000. is 10⅔ per cent. of that sum. 10⅔ per cent. of $13,271.41, the amount of note for interest on this loan, (56-E.) and of $163,000., the balance due on the $300,000., both of which are included in the sale, is $18,802.28. Calculated back to January 1, 1861, the present value is $8,282.94.

I allow on account of loan	$ 98,607.09
I allow on account of interest payment	1,525.42
I allow on account of note for interest and balance of loan	8,282.94
	$108.415.45

11. ROANOKE NAVIGATION COMPANY.

Stock $80,000.

Amount claimed in answer $3,832.

Amount claimed in exhibits first filed (13-E.) (35-E.) $3,832.

Value shown on direct-examination of Mr. Hillman, as follows:

> "Mr. Holt: No. 11 upon the main Exhibit No. 3, is Roanoke Navigation Company stock, indicated as $80,000., and likewise indicated thereon as of the value on January 1, 1861, of $3,832.; and we file the underlying exhibit in support thereof, marked in the upper right hand corner Exhibit Hillman No. 3, Asset C, No. 11, and mark the same as Defendant's Exhibit 3, Asset 11." (151.)

Mr. Hillman now claims, (after having had his attention called to the fact that he claimed $80,000 in 1863) on the cross-examination, the full sum of $80,000., (441) without suggesting any fact or circumstance that justified the increase, and the claim is so increased. (12a-E.) There is no evidence of any kind in the record claimed as tending to establish the value of this stock except the fact of its par value and that it was paid for at that rate.

It appears that there was received from the Roanoke Navigation Company on decree of court September 30, 1882, $3,832. (35-E.) This sum was evidently relied upon by the defendant in its answer, in its first exhibit, and by the testimony of its witness on the direct-examination, as the only basis to show the value of this stock.

My attention has not been called to the date of its organization.

No dividends appear to have been paid; and nothing appears to show what its physicial condition was at any time during its history.

Calculated back to January 1, 1861, the present value of $3,832. is $1,662,47.

I allow ..... $1,662.47.

12. ALEXANDRIA CANAL COMPANY.

Stock, $272,000.

Amount claimed in answer $816.

Amount claimed as its value in the first exhibit filed was $764.47. (13-E.) (36-E.)

The direct-examination of the witness Hillman, showed the following:

> "Mr. Holt: No. 12 upon the Defendant's main Exhibit No. 3 is Alexandria Canal Company stock, indicated thereon at $252,000., and as having a value on January 1, 1861, of $764.47; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-12, and ask that it be marked Defendant's Exhibit No. 3, Asset 12." (151.)

As to this item the witness Hillman testified on the cross-examination as follows:

> "What did you place on that exhibit as the value of that stock January 1st, 1861? A. On page 13 of the printed record, I have carried opposite that, under the value column, $764.47, marked with a double star, which means the sales value.
> "Q. And that was realized for it in what year? A. July 1st, 1887, as shown upon page 36 of the printed record." (441)

This amount the witness changes on cross-examination, for the reasons before given, and under similar conditions, to $272,000. (442) The supporting exhibit for this item simply proves as the value the amount that the State received on July 1, 1887, the net sum of $764.47. (36-E.) The amended schedule now claims $272,000. (12b-E.)

This Company was incorporated in 1847. (O. R. 952.) There is no evidence of its character or condition. It does

not appear whether it at any time paid dividends. Except the fact that the par value of the stock appears to have been paid by the State, the only evidence of its value is the amount that was received therefor in 1887, proved by defendant.

Calculated back to January 1, 1861, the present value of $764.47 is $295.16.

I allow ..... $295.16.

13. UPPER APPOMATTOX COMPANY.

Stock $56,500.

Amount claimed in answer $16,144.26.

The amount claimed in the original schedule filed by West Virginia was $16,144.26. (13-E.)

Amount now claimed $56,500. (12b-E.)

The direct-examination of the witness Hillman showed the following:

> "Mr. Holt: No. 13, on the e main Defendant's Exhibit No. 3, is Upper Appomattox Company stock, shown as $56,000., and with an indicated value thereon of $16,-144.26 on January 1, 1861; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-13, and in the left hand corner, at the top, Class C, and ask that the same be marked Defendant's Exhibit No. 3, Asset 13." (152)

On the cross-examination the claim, for the usual reason and under the same conditions, is changed to the par value of $56,500. (442-3.)

My attention is not called to the date of the organization of this Company. There is no evidence of its character or condition, as to whether or not it ever paid any dividends, what the character and extent of its business was, or any fact tending to show its value, except that which appears upon Defendant's Exhibit, (37-E) showing that $16,144.26 was received for the stock between February 24, 1875, and July 8, 1884; the only other facts in the case being the par value and the fact that it was paid in.

Plaintiff's Exhibit No. 3 shows how and when this $16,144.26 was paid, viz.,

February, 4, 1875, Cash	$ 3,000.00	(369-E.)
March 29, 1881, Cash	2,280.00	(369-E.)
July 8, 1884, Bonds	10,864.26	(367-E.)
	$16,144.26	

Calculated back to January 1, 1861, the present value of these sums is $7,163.36.

I allow ..... $7,163.36.

14. DISMAL SWAMP CANAL COMPANY.

Stock $190,000.

Amount claimed in answer $24,839.98.

In the exhibit filed by the defendant the amount claimed is $9,935.99; (13-E) in the revised exhibit the amount claimed is $190,000. (12a-E.)

The evidence on this point on the direct-examination of Mr. Hillman shows:

> "Mr. Holt: No. 14 upon the Defendant's main Exhibit No. 3, is Dismal Swamp Canal Company stock, indicated thereon at $190,000., and as having a value on January 1, 1861 of $9,935.99; and we file in support thereof the underlying exhibit marked in the upper right hand corner, Hillman Exhibit 3, Asset C-14, and ask that it be marked Defendant's Exhibit 3, Asset 14." (152) (38-E.)

On the cross-examination, for the same reason and under the same conditions, this claim was changed from $9,935.99 to $190,000. (443.)

This Company appears to have been incorporated in 1821. There is no evidence in the record as to its quality, condition, earning power or physical character; and it does not appear that it ever paid a dividend. The only fact in the record, outside of its par and the fact that it was paid for at par by the State, that tends to indicate its value is the fact that the stock was sold September 30, 1868, for $9,935.99. (369-E.)

Calculated back to January 1, 1861, the present value of $9,935.99 is $6,782.25.

I allow $6,782.25

15. LOAN TO WASHINGTON COLLEGE.

$2,000.

Amount claimed in answer $2,000.

Amount shown on defendant's original exhibit $2,000. (13-E.)

This was a balance of $2,000 on an original loan of $4,000.

No question seems to be made as to the responsibility of Washington College, and the loan appears to have been paid in full January 1, 1896. (39-E.)

The parties agree upon the value of $2,000.

I allow ..... $2,000.

16. RICHMOND ACADEMY BONDS.

$400.

Amount claimed in answer $400.

Amount claimed in original exhibit filed by defendant $400. (13-E.)

No question is raised about the responsibility of the Richmond Academy, and the loan appears to have been paid in full February 5, 1896. (40-E.)

The parties agree upon the value of $400.

I allow ..... $400.

17. CLAIM AGAINST UNITED STATES GOVERNMENT.

$298,369.74.

Amount claimed in answer $298,369.74.

Amount claimed in original exhibit filed by defendant, $298,369.74. (13-E.)

This claim seems to be predicated upon the fact of advances originally made by the State of Virginia to the United States in aid of the War of 1812. (426-E.) All of these advancements were refunded during and at the close of the War of 1812. (427-E.) "And in 1825 interest" upon the advancements "was allowed and paid to the exetent of $178,500., which settlement was then and afterwards regarded by the United States Government as a finality." (427-E.)

The State of Virginia contended that the interest should have been computed upon a different basis, and that if so computed there would be a balance of interest due of $298,-369.74.

Virginia made a claim against the United States for this balance of interest, as of July 1, 1814, $298,369.74, and for interest upon that balance up to February 11, 1894, 79 years, 7 months and 10 days, at 6 per cent., $1,425,212.79, a total of $1,723,582.53. (41-E.)

Under an Act of Congress dated May 27, 1902, (426-E.) this claim was adjusted as of February 11, 1894, apparently because the bonds and claims that the United States held against Virginia, which were to be used as an offset against Virginia's claim, would on that day with interest approximately equal the claim of Virginia with interest.

The United States held the bonds of Virginia, amounting to	$ 581.800.
Chesapeake & Ohio guaranteed bonds, amounting to	13,000.
Interest on $594,800 from January 1, 1861, to February 11, 1894,	1,181,669.33
Aggregating	$1,776,469.33
Deducting from this the interest paid in 1867 and 1870, at 4 per cent. on $581,800	69,816.
	$1,706,653.33
And adding the amount paid the Restored State of Virginia	16,923.70
Left the balance as due from Virginia to the United States as	1,723,577.03
And this with $5.50 in cash just equaled the amount of Virginia's claim.	
West Virginia claims the balance of interest thus claimed to be due by Virginia	298,369.74
And interest upon this balance of interest from July 1, 1814, to January 1, 1861	832,451.57
Making a total of claim for West Virginia of	$1,130,821.31

The amount claimed under this schedule is the sum of $298,369.74, the amount alleged to be due for interest July 1, 1814. (41-E.)

It appears that the bonds owned by the United States, $581,800., make a part of the aggregate of the indebtedness of $33,897,073.82 and are taken in that aggregate at par as a charge against West Virginia.

The claim of West Virginia against Virginia upon this item is based upon the assumption that the settlement between Virginia and the United States resulted in effect in

the payment in cash to Virginia of the sum of $1,723,582.53, and that this establishes the cash value of the claim of Virginia January 1, 1861, principal and interest, at $1,130,821.31.

It is too evident for discussion that the adjustment between the United States and Virginia was purely arbitrary and not necessarily dependent upon the cash values of the claims upon either side. They were adjusted as of February 11, 1894, because with the principal sums involved and the interest computed upon either side, upon that date they practically balanced each other. It is a well known fact that almost universally the Government of the United States never pays interest on any claims against it. It is incredible with its well known policy and practice that the United States would ever have appropriated cash out of its treasury for the settlement of this claim of Virginia for interest, predicated upon a balance of interest in the first instance, interest upon a balance of interest of $1,425,212.79, thus aggregating $1,723,582.53; and it would seem to be clear that this claim never would have been adjusted upon the basis that appears to have been adopted, had it not been for the conflicting claims of the United States and Virginia. The adjustment involved the payment in cash of only the small sum of $5.50, and it was evidently a mere balancing of one claim against the other for the purpose of setting at rest the controversy.

It is difficult to tell, upon any basis that will stand the test of a logical analysis, what should be allowed in the adjustment in connection with this item. Virginia admits that she should be charged with the bonds, but claims that they should be reduced to 30 per cent. of their value, as that was their market value when they were used in the settlement by the United States. Virginia, however, has been allowed for their full face value in the aggregate of the debt, with its proportion of which West Virginia is to be charged; and it does not seem that she should be allowed to charge the bonds

at their face value, and at the same time credit them in effect to West Virginia at 30 per cent. of their value.

As to this item I think that Virginia should be charged with the full face value of her own bonds only, $581,800.; and, as the interest received thereon is excluded in this conclusion in determining their value, that West Virginia should not be charged with any portion of the interest on these bonds that may have accrued, as Virginia, except in the matter of this settlement, has never been called upon to pay any part of the interest.

This conclusion disallows the claim of West Virginia made later for interest of $832,451.57. (46-E.)

$581,800. plus $5.50 equals $581,805.50, received in 1903. Calculated back to January 1, 1861, the present value of $581,805.50 is $164,584.30.

I allow ..... $164,584.30.

18. CLAIM AGAINST SELDEN WITHERS COMPANY.

Amount claimed in answer $152,023.04.

In the exhibits filed by the defendant the amount claimed is $132,842.74. (13-E., 42-E., 43-E.) This amount is agreed to. (363-369-E.)

Between the dates of April 26, 1866, and August 20, 1891, the aggregate sum of $132,842.74 appears to have been paid upon this claim.

The various payments, calculated back to January 1, 1861, for their present value as of that date are, respectively:

		Value at Jan. 1, 1861
April 26, 1866	$ 500.00	$ 378.79
June 23, 1866	4,674.60	3,514.74
July 11, 1866	1,189.48	894.35
December 7, 1866	2,212.00	1,632.47
November 5, 1868	5,522.00	3,756.46
July 17, 1869	5,150.00	3,399.34
April 27, 1871	5,000.00	3,086.42
June 3, 1871	8,036.49	4,945.53
July 6, 1871	4,395.19	2,696.44
Sept. 13, 1871	11,871.30	7,238.60
November 9, 1871	5,089.29	3,084.42
November 18, 1871	8,211.91	4,961,88
December 23, 1871	10,000.00	6,024.10
March 6, 1872	13,692.98	8,199.39
May 4, 1872	3,000.00	1,785.71
June 10, 1872	10,000.00	5,934.72

December 4, 1872.....	1,600.00	932.94
December 21, 1872.....	10,000.00	5,813.95
June 23, 1873.....	9,500.00	5,428.57
Sept. 24, 1873.....	7,500.00	4,249.29
February 20, 1875.....	1,600.00	864.86
May 13, 1887.....	1,286.00	498.45
November 26, 1889.....	2,504.00	915.54
August 20, 1891.....	307.50	108.28
	$132,842.74	$80,345.24

I allow ..... $80,345.24.

19. RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY.

Loan $149,984.

This was a dividend bond. (44-E.)

This item does not appear in the answer.

The amount that appears on the exhibit filed by the defendant is $149,984., (12b-E.) and it was finally paid.

The Richmond, Fredericksburg & Potomac Railroad Company was operated at a profit, and was able to pay on January 1, 1861.

I allow ..... $149,984.

SUMMARY—CLASS C.

1. Orange & Alexandria Railroad Company.

Stock	$ 573,672.00	
Loan	398,670.60	$ 972,342.60

2. Richmond & Danville Railroad Company.

Stock	$ 1,588.440.00	
Loan	565,803.34	2,154,243.34

3. Richmond & Petersburg Railroad Company

Stock	$ 441,126.40	
Dividend Bonds	33,408.00	474,534.40

4. Virginia Central Railroad Company.

Stock	$ 2,390.918.08	
Loan	90,032.82	
Dividend Bonds	143,508.00	2,624,458.90

5. Blue Ridge Railroad Company		$ 402,153.10
6. Alexandria, Loudoun & Hampshire Railroad Company		35,096.85
7. Winchester & Potomac Railroad Company		83,333.33
8. Virginia & Tennessee Raiiroad Company		84,799.90
9. South Side Railroad Company		0.
10. Norfolk & Petersburg Railroad Company.		
Loan	$ 98,607.09	
Interest Payment	1,525.42	
Note for Interest and Balance of Loan	8,282.94	108,415.45
11. Roanoke Navigation Company		1,662.47
12. Alexandria Canal Company		295.16
13. Upper Appomattox Company		7,163.36
14. Dismal Swamp Canal Company		6,782.25
15. Loan to Washington College		2,000.00
16. Richmond Academy Bonds		400.00
17. Claim against United States Government		164,584.30
18. Claim against Selden Withers Company		80,345.24
19. Richmond, Fredericksburg & Potomac Railroad Company		149,984.00
		$ 7,352,594.65

CLASS D.

INTEREST ON LOANS AND DIVIDENDS ON STOCK ACCRUED PRIOR TO JANUARY 1, 1861, UPON COMMON INVESTMENTS, AND COLLECTED BY THE STATE OF VIRGINIA AFTER JANUARY 1, 1861, AND STILL UNACCOUNTED FOR.

1. ORANGE & ALEXANDRIA RAILROAD COMPANY.

Dividend Bonds and Interest on Loan.

Amount claimed in Defendant's Exhibit No. 4, $51,942.09. (46-E.)

Of this, $31,604.09 was paid March 26, 1864, and $20,336.98 October 20 and 25, 1862. Reduced to a gold basis these sums produce $9,466.52. (Plaintiff's Exhibit No. 4, 370-E.)

Calculated back to January 1, 1861, the present value of $9,466.52 is $8,443.23.

I allow ..... $8,443.23.

2. RICHMOND & DANVILLE RAILROAD COMPANY.

Interest on Loan.

Amount claimed (Defendant's Exhibit No. 4, 46-E.) $10,500.

This loan was paid in full February 28, 1861. (370-E.)

I allow ..... $10,500.

3. RICHMOND & PETERSBURG RAILROAD COMPANY.

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $9,640.

This was paid to the State February 28, 1861. (370-E.)

I allow ..... $9,640.

4. VIRGINIA CENTRAL RAILROAD COMPANY.

Interest on Loan and on Dividend Bond.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $7,119.14.

The first item was interest on loan paid January 2, 1861, $1,159.34; and the interest on the dividend bond was paid January 19, 1861, $5,959.80. (370-E.)

I allow ..... $7,119.14.

5. WINCHESTER & POTOMAC RAILROAD COMPANY.

Annuity Payment.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $833.33.

This was paid in November, 1861. (370-E.)

I allow ..... $833.33.

6. RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY.

Interest on Dividend Bonds.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $4,467.41.

This interest was paid January 16, 1861. (370-E.)

I allow $4,467.41

7. VIRGINIA & TENNESSEE RAILROAD COMPANY.

Payments Claimed on Account of Interest.

Amount claimed in Defendant's Exhibit No. 4, $280,000. (46-E.)

Between 1861 and August, 1863, the aggregate sum of $280,000 appears to have been paid. (370-E.)

The various payments, reduced to gold, and calculated back to January 1, 1861, for their present value as of that date are, respectively:

		Value at Jan. 1, 1861
1861, $35,605.57 at face	$35,605.57	$35,605.57
January, 1862, $14,394.43, Confederate money 1¼, (O. R. 647)	11,515.54	10,863.72
February, 1863, $90,000, Confederate money 4, (O. R. 647)	22,500.00	20,000.00
March, 1863, $50,000, Confederate money 5, (O. R. 647)	10,000.00	8,849.56
May, 1863, $55,000, Confederate money 5¾, (O. R. 647)	9,565.22	8,390.54
August, 1863, $35,000, Confederate money 12½, (O. R. 647)	2,800.00	2,424.24
	$91,986.33	$86,133.63

I allow $86,133.63

8. SOUTH SIDE RAILROAD COMPANY.

Payments Claimed on Account of Interest.

Amount claimed in Defendant's Exhibit No. 4, $264,500. (46-E.)

Between July, 1862 and July, 1863, the aggregate sum of $264,500. appears to have been paid. (371-E.)

The various payments, reduced to gold, and calculated back to January 1, 1861, for their present value as of that date are, respectively:

		Value at Jan. 1, 1861
July, 1862, $228,000, Confederate money 1½, (O. R. 647)	$18,666.67	$17,125.39
September, 1862, $56,000, Confederate money 2½, (O. R. 647)	22,400.00	20,363.64
October, 1862, $56,000, Confederate money 2½, (O. R.647)	22,400.00	20,271.49
November, 1862, $12,500, Confederate money 3, (O. R. 647)	4,166.67	3,753.76
January, 1863, $28,000, Confederate money 3, (O. R. 647)	9,333.33	8,333.33
July. 1863. $28,000, Confederate money 9, (O. R. 647)	3,111.11	2,705.31
July. 1863, $56,000. Confederate money 9, (O. R. 647)	6,222.22	5,410.63
	$86,300.00	$77,963.55

I allow $77,963.55

9. NORFOLK & PETERSBURG RAILROAD COMPANY.

Interest on Stock and on Loan.

Amount claimed in Defendant's Exhibit No. 4, interest on stock $9,900., and interest on loan $36,000. (46-E.)

$9,900. was paid in January, 1862, which on a gold basis amounts to $7,920.; $36,000. was paid in January, 1864, which on a gold basis amounts to $1,800. (371-E.)

Calculated back to January 1, 1861, the present value of these sums is $8,997.12.

I allow ..... $8,997.12.

10. JAMES RIVER AND KANAWHA COMPANY.

Dividend on Stock.

Amount claimed in Defendant's Exhibit No. 4, $250. (46-E.)

This amount appears to have been paid sometime in 1861. (371-E.)

I allow ..... $250.

11. LOAN TO WASHINGTON COLLEGE.

Interest on Loan.

Amount claimed (Defendant's Exhibit No. 4, 46-E), $60. This was paid. (371-E.)

I allow ..... $60.

12. RICHMOND ACADEMY BONDS.

Interest on Bonds.

Amount claimed (Defendant's Exhibit No. 4, 46-E), $12. This was paid. (371-E.)

I allow ..... $12.

13. CLAIM AGAINST UNITED STATES GOVERNMENT.

Amount claimed (Defendant's Exhibit No. 4, 46-E.) $832,451.57.

This has been disposed of in by finding on Claim 17 under Class C.

I therefore disallow this claim.

14. THE FARMERS' BANK OF VIRGINIA.

Dividends on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $33,691.

This was all paid in January and February, 1861. (371-E.)

I allow ..... $33,691.

15. BANK OF VIRGINIA.

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $33,726.70.

This was all paid during January, 1861. (371-E.)

I allow ..... $33,726.70.

16. BANK OF THE VALLEY.

Dividend on Stock.

Amount claimed (Defendant's Exhibit No. 4, 46-E) $16,936.50.

This was all paid in January, 1861. (372-E.)

I allow ..... $16,936.50.

17. EXCHANGE BANK.

Dividend on Stock.

Amount claimed, (Defendant's Exhibit No. 4, 46-E) $30,642.50.

This amount was all paid in January, 1861. (372-E.)

I allow ..... $30,642.50.

18. NORTHWESTERN BANK.

Dividend on Stock.

Amount claimed, (Defendant's Exhibit No. 4, 46-E) $13,104.

This was all paid in January, 1861. (372-E.)

I allow ..... $13,104.

19. FAIRMOUNT BANK.

Dividend on Stock.

Amount claimed, (Defendant's Exhibit No. 4, 46-E) $1,500.

This was paid in January, 1861. (372-E.)

I allow ..... $1,500.

20. BLUE RIDGE RAILROAD COMPANY.

Tolls.

Amount claimed, (Defendant's Exhibit No. 4, 46-E) $1,534.69.

This was all paid in January, 1861. (372-E.)

I allow.....$1,534.69.

SUMMARY—CLASS D.

1.	Orange & Alexandria Railroad Company	$ 8,443.23
2.	Richmond & Danville Railroad Company	10,500.00
3.	Richmond & Petersburg Railroad Company	9,640.00
4.	Virginia Central Railroad Company	7,119.14
5.	Winchester & Potomac Railroad Company	833.33
6.	Richmond, Fredericksburg & Potomac Railroad Company	4,467.41
7.	Virginia & Tennessee Railroad Company	86,133.63
8.	South Side Railroad Company	77,963.55
9.	Norfolk & Petersburg Railroad Company	8,997.12
10.	James River & Kanawha Company	250.00
11.	Loan to Washington College	60.00
12.	Richmond Academy Bonds	12.00
13.	Claim against United States Government	0.
14.	The Farmers' Bank of Virginia	33,691.00
15.	Bank of Virginia	33,726.70
16.	Bank of the Valley	16,936.50
17.	Exchange Bank	30,642.50
18.	Northwestern Bank	13,104.00
19.	Fairmount Bank	1,500.00
20.	Blue Ridge Railroad Company	1,534.69
		$345,554.80

CLASS E.

FARMERS' BANK OF VIRGINIA.

Amount claimed (48-E.) $1,073,972.82.

The State held 9,626 shares, of the par value of $962,600., in this bank. (48-E.) A book value of 111.57 is claimed.

Stock quotations from November 2, 1860, to January 25, 1861: (340-E.)

November	2,	1860	102	Quoted
November	9,	1860	102	Asked
November	16,	1860	100	Last Sales
November	23,	1860	100	Asked
November	30,	1860	99	Sales
December	7,	1860	99	Sales
December	14,	1860	100	Last Sales
January	4,	1861	100	Last Sales
January	18,	1861	99	Sales
December	7,	1860	99	Sales

The average dividends per year paid by this bank, for five years to and including 1860, were 7.65 per cent. (48-E.) This, capitalized, would be 127.50. The dividend in 1856 was 8 per cent., in 1860 7¼ per cent. This book value is figured on the basis of profits of $475,168.23. (48-E.) In this sum is included bad debts, January 1, 1861, $70,773.96, and doubt-

ful debts, $45,437.34, in all $116,211.30. (475, 1583.) This sum, deducted from the profits, would leave as profits, $358,956.93, or, on the same basis, a book value of 111.39. Deducting from this the dividend allowed for in reaching the calculation of book value, 3½ per cent., we have 107.89.

It appears that the bank declared a dividend of 7¼ per cent. in 1861, which was not earned by the sum of $90,339.07. (478)

There seems to have been some difficulty in ascertaining what the facts were. The defendant's accountant, on an assumption put to him by the cross-examining counsel, the accuracy of which the accountant did not concede, asserted that the bank was in a worse condition in 1861 than on January 1, 1860. (481)

It is conceded by the defendant's accountant that the book value of these stocks is not equivalent to their cash value by at least 5 per cent., the cost of liquidation. I deduct 5 per cent. from 107.89, and take as the value of this stock 102.89; and on that basis the State's stock would be worth $990,419.14.

I allow ..... $990,419.14.

2. BANK OF VIRGINIA.

Amount claimed (49-E) $1,050,345.80.

The State had in this bank 13,766 shares, of the par value of $70, $963,620. (49-E.)

The Stock Quotation Were:

1860, Nov. 2	72	Asked
Nov. 9	70	Last sales
Nov. 16	70	Sales

Nov. 23	70	Asked
Nov. 30	70	Sales
Dec. 7	70	Sales
Dec. 14	70	Sales
1861, Jan. 4	70	Last Sales
Jan. 18	68	Asked
Jan. 25	68	Last sales
Feb. 1	70	Asked
Feb. 8	70	Asked
Feb. 15	68	Sales
Feb. 22	68	Last sales
Mar. 1	68	Sales

(342-E)

The average dividends per year paid by this bank, for five years to and including 1860, were 7.45 per cent. This, capitalized, would give 124.16, on the basis of $100 par value; on the same basis of $70 par value, 86.91.

There were, on January 1, 1861, bad debts $6,412. and doubtful debts $43,973.57, in all $50,385.57. (1582.)

Defendant claims book value of $76.30 per share, based on a surplus of $332,235.32. (50-E.) The doubtful and bad debts, $50,385.57, taken from this surplus, leaves $281,849.75. This would give a book value, on $70 par basis, of 77.44. Deducting from this a dividend of 2.45, as used in the defendant's computation, (49-E) we would have 74.99. Deducting 5 per cent., $3.50 for "actual cash market value," we have 71.49; 13,766 shares at $71.49 is $984,131.34.

As to this bank the following examination occurred: (496)

"Q. Now, I ask you whether in view of the analysis of this statement upon which your figures are based

and which we have just gone over, the condition of the bank, in your judgment as an expert, was good, bad or indifferent? A. Based on the figure which had been quoted only, it would show a bad state of affairs; based on the entire trial balance it is not a bad showing.

"By the Master:

"Q. Does it indicate a prosperous condition or otherwise on the part of the bank? A. Prosperous, when I take the entire trial balance into account. If I am confined only to the items mentioned it will show a very bad state of affairs."

I allow $984,131.34

3. BANK OF THE VALLEY.

Amount claimed (51-E.) $538,096.80.

The State held in this bank 4,839 shares, par value $100., $483,900.

There were no stock quotations.

Profit and surplus, January 1, 1861, were $178,520.10. (51-E.)

The book value claimed is 111.2. The average dividends per year, for five years to and including 1860, were 8.50 per cent. This, capitalized, would show a value of 141.6.

The statement of this bank shows a claim against the deceased teller of $13,522.12. (51-E.) The following statement appeared in the notation made by the directors of the bank:

"In addition to the amount of ascertained liabilities as stated, it is proper to add, that there may probably be due at the mother bank, to banks and depositors, about

$30,000 for omissions on the part of the late teller to enter credits for remittances and deposits—the precise amount not yet accurately ascertained. No ultimate loss, however, to the bank by his credits is apprehended." (407-E.)

These, however, are two doubtful items, the responsibility for which should not be assumed by the State of Virginia; and I therefore deduct the aggregate, $43,522.12, from the profit and surplus of $178,520.10, leaving $134,997.98. This sum would show a book value of 111.1. Deducting the 3½ per cent. allowed in the defendant's computation, (51-E.) we would have a book value of 107.6. Deducting 5 per cent. for "actual cash market value," we have 102.6; 4,839 shares at 102.6 is $496,481.40.

I allow $496,481.40

4. EXCHANGE BANK.

Amount claimed (52-E.) $940,287.

The State held 8,755 shares of stock in this bank, par value $100., $875,500.

The Stock Quotations Were as Follows:

1860, Nov. 2	105½	Sales
Nov. 9	104½	Sales
Nov. 16	104½	Last sales
Nov. 23	100	Asked
Dec. 14	101	Bid
1861, Jan. 4	101	Bid
Jan. 11	100	Sales
Jan. 18	100	Sales
Jan. 25	100	Sales

Feb. 1	100	Last sales
Feb. 8	99½	Sales
Feb. 15	99½	Sales
Feb. 22	100	Sales
Mar. 1	100	Sales

(343-4-E)

The defendant claims, after deducting a dividend of 3½ per cent., a value of 107.4, predicated upon profits of $342,-170.29 (52-E.)

The average dividends per year, for five years to and including 1860, were 8.7 per cent. This, capitalized, would show a value of 145. The dividend for 1860, at 7½ per cent., was $235,282.50. The sum carried as profits for that year, in addition to a contingent fund of $191,584.24, was $150,586.05. (52-E.) The dividend paid in excess of the sum mentioned in the profits was the sum of $84,696.45.

There were doubtful debts, January 1, 1861, of $4,800. (1583) This, deducted from the surplus of $342,170.29, leaves $337,370.29. On this basis the book value, with the deduction of 3½ per cent. dividend, would be 107.2. Deduct 5 per cent. for "actual cash market value," and we have 102.2 8,755 shares at 102.2 is $894,761.

I allow $894.761

5. NORTHWESTERN BANK.

Amount claimed (53-E.) $405,849.60.

The State held 3,744 shares, par value $100, $374,400.

The book value, after deducting 3½ per cent. dividend, of 108.4 is predicated upon contingent fund and profits aggregating $103,849.37. (54-E.)

The average dividends per year, for five years to and including 1860, were 7.6 per cent. This, capitalized, would give 126.66.

In my first report, on the basis of its dividend paying capacity, and a comparison based upon the Fairmount Bank stock, the value of which was conceded, I found this stock to be of the value of $427,250. On the basis now adopted, the book value of 111.9, less 3½ per cent. for dividend, as per Defendant's Exhibit No. 5 (53-E.) and 5 per cent. for reaching the liquidating book value, or 103.4, results in a value of $387,129.60.

I allow $387,129.60

West Virginia is chargeable with all of this stock in the final adjustment except so much as the State held in the Jeffersonville branch, afterwards the Graziers Bank, although Virginia is to be charged in the first instance with the full amount. The total capital stock of this branch October 1, 1861, was $164,200. (1554) In 1862 and 1863 Virginia received dividends on $146,000., and it is claimed that that sum represented her original stock holdings therein, for which she is to be charged. This does not, however, follow. Under the Act of March 13, 1862, it was provided that "Any loyal holder of stock in the Northwestern Bank of Virginia whose stock in said bank was purchased through said branch" might return his stock and exchange it "for a like number of shares of stock in the said Graziers Bank of Virginia." (884, 988) And it was further provided that there should be issued to the State stock "for an amount equal to the balance of the capital stock of the said branch not exchanged under the previous section." There is nothing to show to what extent the State's original holding in this branch was added to by reason of the failure on the part of "loyal stockholders" to exchange under this statute. The number of shares not exchanged July 23, 1863, is stated by the cashier to be 1,364

shares, or $136,400. par, a large portion of the whole capital. The necessary inference from the statement of the cashier is that there was stock that would have been the subject of such exchange, but how much is not stated. (1601) In 1857 the Northwestern Bank bought one-third of the State's stock, and the portion of that purchase which fell to this branch was 250 shares. (Letter of Kelly, cashier, July 23, 1863, 1601)

> "The statement shows that the number of shares actually sold by the state was 1082 shares and if 250 of this 1082 was the number of shares apportionable to the Jeffersonville Branch, then 832 shares was apportionable to the Wheeling Bank with the two branches in the new state. The percentage therefore is as follows:
>
> 250 Shares=23.105%
>
> 832 Shares=76.895%"
>
> (Potter's letter, 1608)

This is the only definite piece of evidence tending to show the proportion of the stock of the Northwestern Bank held by the State in the Jeffersonville Branch.

I find that West Virginia is to be charged, for that reason, in the final adjustment, with 76.895 per cent. of the whole, $387,129.60, namely, $297,683.30, this being the percentage in the other two branches that was held by the State and taken by West Virginia.

6. FAIRMOUNT BANK.

Amount claimed, (55-E.) $51,935.

There are no stock quotations.

The State held 500 shares, par value $100, $50,000. In my first report I held that this was worth $50,000, as it was so conceded by the defendant, to whom it was to be charged.

"The defendant concedes that the Fairmount Bank that was paying only a 4 per cent. dividend was worth par June 20, 1863 (Rec. p. 820-A.)." (Master's report, 191)

The surplus for the year ending 1861 was $7,418.46. On this the defendant claims a book value of 106.87, (51-E.) giving, after deducting 3 per cent. on account of dividend, net book value of 103.87. (55-E) The exhibit shows a dividend of 4½ per cent. for 1860. Deducting 5 per cent. for the actual cash market value, we have 98.87. 500 shares at 98.87 is $49,435.

I allow ..... $49,435.

This is to be charged ultimately to West Virginia.

SUMMARY—CLASS E.

1. Farmers' Bank of Virginia	$990,419.14
2. Bank of Virginia	984,131.34
3. Bank of the Valley	496,481.40
4. Exchange Bank	894,761.00
5. Northwestern Bank	387,129.60
6. Fairmount Bank	49,435.00
	$3,802,357.48

CLASS F.

The allegation in the answer that the items included in this Class have a reasonable value of $4,000,000. because that value was placed upon them "both by the State of Virginia and by the railway company purchasing them," seems to me lacking in foundation. The answer and the facts proved by the defendant show that the consideration for these items was not cash or its equivalent, but a second mortgage. The distinction between a second mortgage for $4,000,000. and cash of that amount, as a measure of real value, is too clear for argument. Especially when the first mortgage was for "not more than $15,000,000.," and the $4,000,000. was payable in Virginia bonds or money at the option of the Railroad Company in annual installments of $500,000. each, the first payment being postponed to 1885, fifteen years from the date of the sale. (377-E., 420-E.) While it is true that West Virginia claims that the items in Defendant's Exhibit 6-A (57-E.) were worth $4,276,044.39, it seems to me clear that, if she had intended to rely upon that value instead of the sum that appears to have been received therefor, she would have so alleged in her answer and followed the allegations by that proof. In that case I can see no reason why they should not have been included in Class C, and so alleged and so proved, without any reference to their subsequent sale, leaving those facts, if available to minimize the values claimed, to be proved by the plaintiff. On the contrary, negativing the claim she now makes, she alleges and proves the sale as a part of her case. In her answer she practically rests her case upon the value evidenced by the second mortgage of $4,000,000.

The Virginia & Tennessee Railroad Company under the name of the Lynchburg & Tennessee Railroad Company was incorporated in 1836, (O. R. 936) and changed to Virginia & Tennessee Railroad Company in 1849. (O. R. 963)

The South Side Railroad was incorporated in 1851. (O. R. 966)

The Virginia & Kentucky Railroad was incorported in 1853. (O. R. 967)

The Norfolk & Petersburg Railroad was incorporated in 1853. (O. R. 963)

The Virginia & Kentucky Railroad, for which $82,000.61 is claimed, had never been operated at that time, and that sum was "simply the construction value." (546) There is no evidence of the physical condition of any of these roads. The Virginia & Tennessee Railroad paid a dividend of 6 per cent. in 1864, which in gold was about ½ of 1 per cent. And the Norfolk & Petersburg Railroad paid, on its guaranteed stock of $82,500., dividends of 3 per cent. in 1863, in gold ¼ of 1 per cent.; 3 per cent. in 1864, in gold 1/9 of 1 per cent.; and 6 per cent. in 1865, in gold 1/10 of 1 per cent. (227-E) There is no evidence that any other dividends were ever paid on any of these stocks.

The plaintiff proves a quotation of the Virginia & Tennessee Railroad Company stock, July 24, 1863, of 115, and September 3, 1863, of 135, (335-E.) and shows by her exhibit a value on that date of Virginia's stock, based on the stock quotation, of $348,147.16. (385-E) I have not taken the stock quotations as the standard of value in any other instance, and do not feel at liberty to do so as to this stock. The fact that this road for nearly thirty years paid but one dividend, and that trifling in amount, under the unusual war conditions is not strongly indicative of value. Its loan of $1,000,000 is treated as of no value in the omnibus sale to the Atlantic, Mississippi & Ohio Railroad Company, and is described

as follows: "VI. All claims, rights and privileges which belong to the State of Virginia on account of loan of $1,000,000." (56-E)

Whether the State was still repudiating the validity of the transactions which the defendant claims resulted in the payment of $886,685 (31-E.) on this loan, or was affirming the validity of the sale and claiming the balance due with interest, or whether the failure to place any value upon it was occasioned by the lack of financial responsibility of the Railroad Company does not appear. If the loan had no value it necessarily follows that the stock would be worthless.

It is not open to West Virginia to contend that the sale to the Atlantic, Mississippi & Ohio Railroad is not competent evidence tending to show the value of those securities, as she both alleges and proves it. The circumstances under which the sale was made, the grouping together of fourteen items of property, two of which, of a nominal value of $1,800,000., are treated as of no value; all of the other twelve items being given a value exceeding by $689,436.41 the $4,000,000. secured by the second mortgage; the fact that the payment of this $4,000,000. was subject to a first mortgage of "not more than $15,000,000.;" (421-E) that as a part of the consideration of the sale the State was to be "absolved from all and whatever liability for and by reason of her unsatisfied subscriptions to the Virginia & Kentucky Railroad Company," (420-E) (subscription rights did not appear to have had much value); and the Atlantic, Mississippi & Ohio Railroad was to construct "the road to Cumberland Gap" (a link in the system of about 100 miles of difficult construction) and take care of "repairs and improvements of the whole line;" (421-E) and the $4,000,000. second mortgage of Virginia was to secure the payment of $4,000,000. of Virginia bonds, or money, at the option of the company, "payable by annual installments of $500,000. each, the first payment to be made during the year 1885," thus postponing the first payment some fifteen years; are strongly indicative of an abortive, profitless

enterprise. The further fact that after the lapse of ten years, and the expenditure of approximately $5,000,000. of new money, (256, 260, 266-E) the enterprise again met with shipwreck, and the State was able to save as salvage from the wreckage, and that apparently through the grace of the first mortgagees, only the sum of $500,000. in 1882, (543) (165-E.) sheds a significant light on the inherent vice of this enterprise as a destructive absorbent of capital. Under these circumstances and with this history I do not feel justified in adopting the value of these stocks now claimed by the defendant, practically equivalent to their full original cost. The amount received at this sale is the only other criterion.

The values stated in the sale to the Atlantic, Mississippi & Ohio Railroad Company of the various properties are in the aggregate $4,689,436.41. For these properties $500,000. was received. In a proper distribution of the price received, each item of property would be entitled to its proportion. $500,000. is 10⅔ per cent. of $4,689,436.41, and in distributing this price among the properties transferred each property would be entitled to 10⅔ per cent. of the value stated in the sale.

Virginia & Tennessee Railroad Company. $2,270,525., 10⅔ per cent.	$242,189.33
South Side Railroad Company, $803,500., 10⅔ per cent.	85,706.66
Virginia & Kentucky Railroad Company, $82,000.61, 10⅔ per cent.	8,746.73
Norfolk & Petersburg Railroad Company, $1,200,000., 10⅔ per cent.	128,000.00
Total	$464,642.72

Calculated back to January 1, 1861, the present value of these sums is $204,688.42.

I allow $204,688.42

SUMMARY—CLASS F.

$204,688.42

CLASS G.

JAMES RIVER AND KANAWHA COMPANY.

This item was considered in my former report. On the question of value the record then showed: amount of stock held by the State, $10,400,000, total cost of same $9,547,582.21, a dividend in 1836 of $10,092. (O. R. 820-L and 820-M) On these facts I found that the stock was of no value. (568)

In the present record there are 172 pages devoted to a detailed and exhaustive statement of the business, prospects and financial condition of this company.

Because of the fact that "so much time has elapsed and the evidence of the actual value of this stock as of that date [January 1, 1861] has become so obscure," (59-60) the defendant in her answer claimed only 25 per cent. of the par value of $10,400,000, or $2,600,000. This valuation was purely arbitrary, the result of conjecture, and was abandoned in their exhibits. In making out their case they claimed $5,410,429.54 as the value, (60-E.) on the ground that the property was capitalized at that sum in 1882 by the Richmond & Alleghany Railroad Company. (66-E., 66a-E.) This capitalization, as showing the value of the State's stock in the James River and Kanawha Company, is effectively negatived by several considerations. The State owned only 91.77 per cent. (1467) of the stock; and if $5,410,429.54 was the value of the property, only 91.77 per cent. should be charged as the value of the State's interest, whereas the whole is claimed.

The property was subject to an indebtedness of $1,877,-912.83 as proved by Defendant's Exhibit No. 7; (218-9-E.) and if $5,410,429.54 was the fair value of the property acquired from the James River and Kanawha Company, this indebtedness should be deducted, to show the net value of the assets of the James River and Kanawha Company, as on that basis only would Virginia be charged. This important fact is proved by the defendant; but in proving the value claimed, it is ignored. In a proper exhibit, purporting to show the value on this basis, the fact of this indebtedness should have been noted, as otherwise, if that basis had been adopted, this indebtedness of nearly $2,000,000 might have been overlooked.

The Richmond & Alleghany Railroad made this purchase March 4, 1880. (208-E) It proceeded to place upon the property for the purpose of improving it two mortgages, one of $4,925,000. and one of $729,000. (981) Its efforts were unfortunately attended with such a degree of failure that on June 23, 1883, the trustees in mortgages dated April 27, 1881, May 24, 1881, and October, 1883, and the trustees in a mortgage dated March 5, 1880, brought foreclosure suits. Such proceedings were had that the whole property was sold at auction April 16, 1889, for $5,000,000., thus wiping out the capitalization of $5,410,429.54, and showing that the assets thus capitalized were of only nominal value. In the sale of March 4, 1880, by the James River and Kanawha Company to the Richmond & Alleghany Company, the stock of the State was treated as worthless. The State never received anything therefor. The consideration of the sale was "the maintenanc of the canal as a line of commerce, * * * and the construction and equipment of the railroad hereinafter described," (Richmond to the Joshua dam, near the towpath to Clifton Forge, and a branch to Lexington) and "the assumption and payment of all the debts and obligations of the James River and Kanawha Company." (209-E.) $29,672.30 was to be paid for salaries and wages of officers and employees,

etc. (220-E.) The debts to be assumed were $1,877,912.83. (219-E.) The details of the Richmond & Allgehany transaction negative, rather than prove, any value to this stock. The James River Company was organized in 1785, with George Washington as its first president. (1477) It continued under this name until 1835, when it was merged in the James River and Kanawha Company, at a price of $1,350,000. (1480) The tonnage handled by the canal has gradually increased from 122,695 in 1844 to 231,032 in 1853 and 244,273 in 1860, dropping meanwhile to 183,363 in 1857. (1130)

The Receipts for Tolls Were:

In 1844,	$178,448.63	
In 1849,	238,494.49	
In 1852,	269,210.81	
In 1853,	283,998.60	
In 1859,	174,975.02	
In 1860,	229,256.54	(1134)

The Net Revenues Were:

In 1843,	$101,014.87	
In 1849,	175,639.49	
In 1852,	182,190.47	
In 1853,	170,368.81	
In 1856,	106,376.40	
In 1857,	9,499.64	
In 1858,	6,356.34	
In 1859,	61,228.64	
In 1860,	105,928.42	(1130, No. 11)

During the year 1860 the increase in receipts was more than $60,000., (1079) and there was an increase of 30 per

cent. in the boats locked above Richmond. (1094) The great irregularity in business and results is unexplained. There was a substantial increase in volume, in 1860 over prior years, of many of the staple articles transported, though in some cases the volume was less. In 1855 it carried 4,863,383 feet of lumber, and in 1860, 25,600,576 feet, though that was nearly 2,000,000 less than the amount in 1859; in 1855, 2,029,338 shingles, in 1860, 3,116,600; in 1855, 149,391 bushels of wheat and in 1860, 360,918; though it carried in 1858, 483,404 bushels. In outward trade, in 1855, 57,520 bushels of wheat, in 1856, 185,288, in 1860, 143,000; while of tobacco, in 1855, 78,600 packages, 23,857 hogsheads, 387 tierces, and in 1860, 56,367 packages, 20,434 hogsheads, 1,117 tierces. (1110)

The total expenditures up to September 30, 1860, were $17,253,492.75. (1190)

The plaintiff proves a stock quotation December 14, 1860, 18½ "last sales." (335-E.) This quotation could not have been on the preferred stock of the State, as none of it was sold. It must have been on the common stock, which, with $7,400,000. of 6 per cent. preferred ahead of it, must have been worth very much less than the State's preferred stock. If the quotation was to govern, the preferred was at that time worth considerably more than 18½. Plaintiff claims that this quotation is "exceedingly high."

In 1860 it owed to the State of Virginia $7,560,214.44. (1147) Under an Act of March 23, 1860, (67-E.) the State was authorized to subscribe for 74,000 shares of the stock of the company, which stock was to be 6 per cent. preferred. 2,000 shares were to be used to extinguish the floating debt of the company, and upon the receipt of the balance of 72,000 shares a receipt in full, for the several debts due to the State and for any claims against the company on account of the debts for which the State was responsible as surety, was to be given. (67-E.) This transaction appears to have been consummated. Instead of the company being indebted to

As the amount of the net earnings would not equal the 6 per cent., dividend on the $7,400,000. preferred stock of the State, the whole capitalization properly applies to the State's stock.

I allow $1,664,333

MANASSAS GAP RAILROAD COMPANY.

This road was incorporated in 1851. (O. R. 963) It had cost, up to 1860, $3,322,164.67. "The road was not operated at that time and no other value than the above is obtainnable." (61-E.) The State had $2,105,000. of its stock. It had taken $250,000. of preferred stock in 1858 and $350,000. of 6 per cent. preferred stock in 1860. (O. R. 963) In the answer the total amount of stock is alleged, and its value reduced to 25 per cent. of its face, as "so much time has elapsed and the evidence of the actual value of this stock as of that date has become so obscure." (59-60) In harmony with Defendant's Exhibit No. 7-A, (61-E.) not claiming any value for the stock, as subsequently explained by Mr. Hillman, Defendant's Exhibit No. 11, (66a-E.) "Summary of claims," made no claim for the stock, and Defendant's Exhibit No. 3, (13-E.) under Class C, made no claim therefor, although in Defendant's Revised Exhibit No. 3, (12a-E.) it is claimed as item 2, and in the Revised Exhibit No. 11, (66-E.) marked "Corrected copy, superseding page 66-A following," it appears claimed as a separate item, Class G, Exhibit 8, $2,105,000. (66-E.) Deducting $2,105,000. from the total of Defendant's Revised Exhibit No. 3, $14,816,175.78, (12b-E.) leaves $12,711,175.78, which is carried into the corrected summary as Class C, Exhibit No. 3, $12,711,175.78. (66-E.) This explanation is made as this item in the corrected summary does not agree with the total in either Defendant's Exhibit No. 3 or Revised Exhibit No. 3.

Mr. Hillman testified as to this road:

"Q. You have not extended these in your summary of charges against Virginia the amount which she expended for stock in that road? A. No, sir, I have not.

"Q. Why did you not do it? A. For the reason that the road was not sold for anything, and was given away

simply on the condition that the stockholders outside of the State should be taken care of, and therefore I did not put it on.

"Q. Then you pursued a different method——

"Mr. Lilly: I first want to make one statement, that we will have other data and evidence in reference to the value of this road as of the dates relied on." (574).

I have not been able to find anything that adds any element of value. Mr. Anderson is the only witness that testifies as to this road, and he simply gives some details of the construction, such as its length, 112 miles, 42½ completed and 69¾ under construction in 1854; (973) not a word as to its prospects, expectations, earnings actual or anticipated, or as to the resources or population that it was to serve and develop. It appeared that in 1860 a report showed that "The whole length of the first track laid on main line and branches, measuring the road, exclusive of second tracks and sidings, 86.73 miles." (726) This shows a cost of between $35,000. and $40,000. a mile, as compared with a cost of $14,000. or $15,000. a mile for the Orange and Alexandria. This fact would hardly tend to improve its value as an investment.

Mr. Hillman further states:

"Q. Then you pursued a different method with respect to this road from other items that you have testified to, did you not? A. Yes, sir, I did.

"Q. Why did you do that? A. For the reasons that I have first stated.

"Q. Was there any other reason than that this interest was given away that you did not charge it to Virginia? A. Yes, sir.

"Q. Well, what was it? A. I will state that in Class G, in the supplemental answer, pages 58, 59 and 60, these

were classed as you might say as a special lot of securities of doubtful value as is shown by the assumption that they were only worth 25 per cent. of their face, and for that reason I did not put in any value for this road, or any of the other ones there excepting the James River and Kanawha." (575).

"Q. Why did you not show on that exhibit (61-E.) the amount expended by the State, to wit., $2,105,000. for the stock of that road? (573) A. For the reason expressed in the foot note there, and that no claim was made by us for the consideration of this item in our final exhibit." (574)

"Q. You knew what the cost of the State's expenditures in the Manassas Gap Railroad was, did you not? A. Yes, sir. (575)
"Q. It was shown on the books, was it not? A. Yes, sir.
"Q. And yet you did not charge that to Virginia as its value in 1861 or 1863? A. No, sir, I did not." (576)

No charge appears to have been made in either the exhibits of 1861 (61-E.) or of 1863. (221-E.) Defendant's Exhibit 3, Class C, (13-E.), testified to on direct examination of Hill man, did not include the Manassas Gap Railroad Company item. The Revised Exhibit 3, Class C, included it. (12a-E.) It is claimed in the Summary Exhibit No. 11. (66-E.) The real reason why the claim is now made is no doubt to be inferred from Hillman's statement:

"Q. You now say that it was proper to have charged the cost to the State of her interest in the Manassas Gap as its value in January, 1861, and June 1863? A. Yes, sir, to present that matter for consideration as I have said before." (577)

I do not understand the witness to express any different opinion as to its value from that which he had already given,

or that there is any purpose to modify his testimony, which as a whole shows that there was no value either proved or claimed for this stock. He simply placed it in the schedule so that it might have "consideration," in view of all the facts and admissions in the case. The stock quotations, so far as they may be entitled to weight, show auction sales of its bonds at 14.50 April 7, 1863, and later at 10, both reduced to a gold basis. (Photos. 1 and 5. 1251-1255-1270) This would seem to indicate that at that time the value of the stock had been wiped out. Counsel for West Virginia evidently concede that the only thing in the record they rely upon to support the claim of $2,105,000. is their Exhibit 61-E; and that exhibit does not claim any value, as in their memorandum filed at my request, giving the "classification and statement of credits relied upon by West Virginia with citations of portions and pages of record in support thereof," under the head "Manassas Gap Railroad" the only citation "in support thereof" is, "See Defendant's Exhibit No. 7-A, New Record, Volume 2, page 61." There is nothing in the record as to facts relating to value, to show that the defendant did not have the same knowledge when she filed her answer, proved the exhibits showing no value, and put in her case on the direct-examination, that she now has; and no substantial reason is given for changing the claim. They abandoned the cost as a standard of value, except, as it was afterward asserted, for "consideration," and made an arbitrary deduction of 75 per cent. from the face; and they proved that the road was given away in 1869. I have no right to conjecture or guess; and there is no basis that would justify me in taking their conjecture of 25 per cent. They abandon the only standard of value shown in the record, cost, and prove facts that tend to show no value.

I find, under these conditions, that the stock was of no value.

SUMMARY—CLASS G.

James River and Kanawha Company	$1,664,333.00
Manassas Gap Railroad Company	0.00
	$1,664,333.00

AMOUNT OF TAXES, FINES, ETC., PAID BY WEST VIRGINIA COUNTIES TO THE STATE OF VIRGINIA AFTER JUNE 20, 1863.

Defendant claims under this classification $224,799.63, (65-E., 224-E.) all claimed to have been paid after June 20, 1863.

It developed that $180,264.45 of this amount was probably assessed after June 20, 1863. (608.) As to the difference between the two, $44,535.18, no question is raised as to the legality of its assessment prior to June 20, 1863. These taxes ($44,535.18) were a legal liability of the taxpayers, their proper and legitimate contribution to the payment of the public charges. The fact that this legal liability was not discharged by these taxpayers until after the territory in which they lived had become a part of the new State, creates no legal or equitable reason why the sums paid in discharge of such legal liability should be returned to them; much less does it create any equitable or legal liability therefor to the State of Virginia, which never paid either directly or indirctly any part of them.

The circumstances and conditions under which the $180,264.45 was assessed were involved in a great deal of doubt and uncertainty. (592, 593, 594.) It is conceded that in balancing the accounts between Virginia and these counties the amount "spent in maintaining the government of those counties" would have to be known to balance it "against the contributions that they made in taxes to her treasury." (596.) The amount, however, was not known. It may have been more, it may have been less, than the amount paid in taxes. No effort appears to have been made to ascertain the facts. Under these circumstances the defendant rests her case upon the mere fact of payment after June 20, 1863, stating upon this point:

> "Mr. Holt: It don't make any difference what the date of it was, just so you can fix the fact that it was collected

> by Virginia after June 20th, 1863; and according to our theory it makes no difference when it was assessed." (640.)

No part of this sum of $180,264.45 was paid by West Virginia, directly or indirectly. Payment of this sum in taxes by individual taxpayers creates no right in West Virginia to recover the amount of Virginia, especially when the amount paid in taxes may have been less than the expense of maintaining the government in those counties; and that element is left in doubt and uncertainty.

I disallow the item.

The defendant at the hearing waived all claim on account of the following items specified in Class G:

Roanoke Valley Railroad	$307,402.00
Fredericksburg & Gordonsville R. R.	132,399.00
Richmond & York River R. R.	490,999.52
Rappahannock Company	179,500.00
Rivanna River Navigation Co.	227,133.00
Smiths River Navigation Co.	4,083.12
Slate River Co.	21,000.00
Kempsville Canal Company	13,650.00
Hazel River Navigation Co.	63,079.58
Goose Creek & Little River Co.	58,255.35
Dragon Swamp Navigation Co.	1,464.00
Chesapeake & Ohio Canal Company	281,111.11

General Summary.

Class A	$819,250.03
Class B	323,167.36
Class C	7,352,594.65
Class D	345,554.80
Class E	3,802,357.48
Class F	204,688.42
Class G	1,664,333.00
	$14,511,945.74

If 23½ per cent. of $14,511,945.74, $3,410,-307.25, is to be credited to West Virginia in reduction of her liability upon her proportion of the "public debt," attention should be called to the fact that between July 2,1863, and February 1, 1864, the State of West Virginia received from the Restored Government of Virginia (Master's report, 181) ..... $170,771.46.

I understand that the Restored Government was the political predecessor of the existing government of Virginia. Under the provisions of the Act passed February 23, 1863, by the Restored Government of Virginia, West Virginia received stock as follows:

Sweet and Salt Sulphur Springs stock	7,578.00
White and Salt Sulphur Springs stock	4,000.00
Fairmount and Palatine Bridge Company stock .	12,000.00
Northwestern Bank of Virginia stock	297,683.30
Fairmount Bank stock	49,435.00
(Master's Report, 193)	$541,467.76

From $3,410,307.25
should be deducted the amount received by West Virginia from the Restored Government of Virginia 541,467.76

Making a net credit to West Virginia of $2,868,839.49

Dated, New York, January 21, 1915.

CHARLES E. LITTLEFIELD,

Special Master.

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